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Supreme Court of the United States

OCTOBER TERM, 1949

No. 79

JULIA RHODA AARON AND ALL OTHER PLAINTIFFS AND INTERVENERS LISTED IN THE COMPLAINTS AND INTERVENTIONS IN THE DISTRICT COURT IN CIVIL ACTION NO. L. R. 1584, CONSOLIDATED, PETITIONERS,

FORD, BACON & DAVIS, INCORPORATED

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

PETITION FOR CERTIORARI FILED MAY 24, 1949.

CERTIORARI GRANTED JUNE 27, 1949.

(This Printed Volume of the Record Is Bound in Three Sections Consisting of the Record, the Supplemental Record and the Proceedings in the Court of Appeals. Each Section Carries Its Own Pagination)

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Pleas and proceedings in the United States Court of Appeals for the Eighth Circuit, at the March Term, 1949, of said Court, before the Honorable Archibald K. Gardner, Chief Judge, and the Honorable John B. Sanborn, the Honorable Joseph W. Woodrough, the Honorable Seth Thomas, the Honorable Harvey M. Johnsen, the Honorable Walter G. Riddick and the Honorable John Caskie Collet, Circuit Judges.

Attest:

E. E. KOCH,

(Seal)

Clerk of the United States
Court of Appeals for the
Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the 15th day of November, A. D. 1947, transcript of record pursuant to an appeal taken from the District Court of the United States for the Eastern District of Arkansas, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, and thereafter on the 22nd day of November, A. D. 1947, abstract of record was also filed in the office of said Clerk of said Circuit Court of Appeals, in a certain cause wherein Julia Rhoda Aaron and all other plaintiffs and interveners listed in the Complaints and Interventions in The District Court in Civil Action No. L. R. 1584, Consolidated, were Appellants, and Ford, Bacon & Davis, Incorporated, was Appellee.

Record as printed by appellants and Supplemental Record as printed by appellee, on which the appeal was heard in the United States Court of Appeals for the Eighth Circuit, are in the words and figures following, to-wit:

RECORD.

United States Circuit Court of Appeals EIGHTH CIRCUIT

No. 13,660

CIVIL

JULIA RHODA AARON AND ALL OTHER PLAINTIFFS AND INTERVENERS LISTED IN THE COMPLAINTS AND INTERVENTIONS IN THE DISTRICT COURT IN CIVIL ACTION-No. L. R. 1584 CONSOLIDATED, APPELLANTS,

vs.

FORD, BACON & DAVIS, INCORPORATED,
APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF ARKANSAS.

United States Circuit Court of Appeals

EIGHTH CIRCUIT

No. 13,660

CIVIL

JULIA RHODA AARON AND ALL OTHER PLAINTIFFS AND INTERVENERS LISTED IN THE COMPLAINTS AND INTERVENTIONS IN THE DISTRICT COURT IN CIVIL ACTION No. L. R. 1584 CONSOLIDATED, APPELLANTS,

vs.

FORD, BACON & DAVIS, INCORPORATED,
APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF ARKANSAS.

ABSTRACT FILED NOVEMBER 22, 1917.

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[fol. 1] In the United States District Court, Eastern
District of Arkansas, Western Division.

Julia Rhoda Aaron et al.,	Civil Action No. L.R.-1584;
Monnie Adams et al.,	Civil Action No. L.R.-1578;
Mary B. Alexander et al.,	Civil Action No. L.R.-1545;
Carroll Arrington et al.,	Civil Action No. L.R.-1192;
Willie K. Hobbs et al.,	Civil Action No. L.R.-1469;
Dan P. Moore et al.,	Civil Action No. L.R.-1244;
H. J. Story et al.,	Civil Action No. L.R.-1382;

Plaintiffs,

vs.

Ford, Bacon & Davis, Inc., Defendant,

Consolidated and now known as

Julia Rhoda Aaron et al., Plaintiffs,	
No. L.R.-1584	vs. Civil Action Consolidated.
Ford, Bacon & Davis, Inc., Defendant.	

Record on Appeal to the Circuit Court of Appeals

Agreed Statement

This appeal involves seven separate actions filed against the defendant, Ford, Bacon & Davis, Inc., operator of the Government-owned Arkansas Ordnance Plant under a cost-plus-a-fixed-fee contract with the Government. The first of these actions was filed on October 1, 1945, and the last on February 6, 1947. Over 1,800 individuals made claims for additional compensation in these seven actions. A conservative estimate of the total amount in suit, exclusive of liquidated damages and costs, is in excess of \$500,000.00. Various pleadings were filed in each case by each party, until finally the issues were joined. Thereafter, the defendant filed identical motions for summary judgment in each of the seven cases. Upon request of the plaintiffs, the seven actions were consolidated, and a hearing was held

in the consolidated case. At this hearing counsel for plaintiffs stipulated that the affidavits in opposition to the motion for summary judgment raised no disputed issues of fact. Thereupon the court, after hearing argument of counsel, granted the motion for summary judgment, and from the judgment entered thereon plaintiffs appealed.

[fol. 2] Although the complaint and subsequent pleadings in each of the cases are not identical, for the purpose of this appeal it is believed that all issues can be presented adequately and clearly by including in the record the essential pleadings in one case only.

Therefore, in order to reduce the cost of preparing the record on appeal and to relieve the court of the burden imposed by a tremendous record, the parties hereby agree that the record on appeal shall contain the following matters:

1. This agreed statement.
2. The complaint filed by 1,278 named individuals on February 6, 1947, in the case of Julia Rhoda Aaron et al., vs. Ford, Bacon & Davis, Inc.
3. The answer filed in said case on May 23, 1947.
4. The motion for summary judgment filed on July 23, 1947.
5. The response to motion for summary judgment filed on August 11, 1947.
6. The motion for consolidation filed on August 15, 1947.
7. The order of consolidation.
8. The plaintiffs' requests for admissions of fact and the responses filed thereto by defendant.
9. The interrogatories propounded by plaintiffs and the responses thereto by the defendant.
10. The order for summary judgment.
11. The opinion of the court.

12. The notice of appeal.
13. Bond for costs on appeal.
14. The appellants' statement of points relied on.
15. The order extending the time to file record on appeal.

TALLEY & OWEN,
C. H. EARL,
GERLAND P. PATTEN,
JUNE P. WOOTEN.

By Gerland P. Patten,
Attorneys for Plaintiffs
and Interveners.

OWENS, EHRMAN &
McHANEY,

By E. L. McHaney, Jr.,
Attorneys for Defendant.

Approved:

Harry J. Lemley,
United States District Judge.

(Endorsed): Filed in U. S. District Court on October
30, 1947.

[fol. 3]

Complaint

Comes the plaintiffs by their Attorneys, C. H. Earl, J. W. McHughes, and Gerland P. Patten, and for a cause of action against the defendant, allege:

I.

That the plaintiffs were employed by the defendant for the time shown on the attached exhibit which is attached hereto and made a part hereof and marked Exhibit "A". The employment of the plaintiffs was based upon and evidenced by a written instrument, a copy of which is attached hereto and made a part hereof and marked Exhibit "A".

II.

That the plaintiffs and each of them have a cause of action against the defendant arising out of their employment by the defendant for overtime wages due to them under the provisions of the Fair Labor Standards Act of 1938, whereby it is provided that a working week shall be forty (40) hours and any hours worked in excess thereof shall be paid for at the rate of one and one-half times the regular base pay rate.

III.

That the defendant, Ford, Bacon & Davis, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and at all times mentioned herein as duly qualified and authorized to engage in business in the State of Arkansas and was so engaged; that the defendant at all times mentioned herein controlled, maintained, and operated an Ordnance Plant in Pulaski County, Arkansas, called the Arkansas Ordnance Plant, wherein goods for commerce were produced.

IV.

That the plaintiffs named above; beginning with Ethel Lee Anderson and ending with Joe Williams were handlers, carriers, and processors of explosives. Their duties were to process, carry and otherwise handle the various types of powder that went into and became an ingredient of the items of ordnance manufactured, made, processed, and produced at the Arkansas Ordnance Plant. That the plaintiffs named above, beginning with Mattie L. Bell and ending with David Young, were production employees on production lines and acted as line leaders and assistant line leaders. Their duties were to prepare the working place for other employees known as operators and to direct and [fol. 4] assist in the handling, processing, and producing of items or ordnance at the Arkansas Ordnance Plant. The other plaintiffs named above beginning with Julia Rhoda Aaren and ending with Robert Young, were operators whose duties were to handle, make, load, assemble, process, and produce items of ordnance at the Arkansas Ordnance Plant. That all of the above-named plaintiffs were engaged in the production of goods for commerce within the meaning of the Fair Labor Standard Act.

V.

That plaintiffs and each of them state that during the time of their respective employment with the defendant, they performed work and labor for it in excess of forty (40) hours per week for which they have not been compensated. The plaintiffs were paid on an hourly basis for a work day of eight (8) hours and a work week of forty (40) hours based on scheduled work hours. The scheduled work hours were divided into three shifts and were from seven (7) o'clock in the morning to three (3) o'clock in the afternoon, from three (3) o'clock in the afternoon to eleven (11) o'clock in the evening, and from eleven (11) o'clock in the evening until seven (7) o'clock the next morning. There was also one production line, referred to as the "Colored Line" which had scheduled work hours from nine (9) o'clock in the morning until five (5) o'clock in the afternoon. The plaintiffs were compelled by the necessities of the defendant's business, by the physical arrangement of the Plant, by the productive aims of the defendant, and by instructions of the defendant to perform work and labor for and to be upon the premises controlled, maintained and operated by the defendant for approximately thirty-five (35) minutes prior and thirty (30) minutes subsequent to the scheduled work hours each work day for which they were not compensated. This action is to recover compensation for such work, labor and time.

The Arkansas Ordnance Plant, at which these plaintiffs were employed, was located upon an inclosed reservation containing several thousand acres. On the reservation and several miles distant from gates (referred to hereinafter as "outer gate") giving admittance to the reservation were production areas. Each production area was inclosed, with a gate (hereinafter referred to as the "inner gate") giving admittance thereto and through which employees working in that area were required to pass. From one hundred (100) to five hundred (500) feet from the inner gate, on the outside of the inclosed production area, was a space (here-[fol. 5] inafter referred to as the "parking area") about a block square designed and used for the loading and unloading of buses and for the parking of privately owned vehicles. From three hundred (300) to eight (800) hundred feet from the inner gate and within the inclosed produc-

tion area was a clock house containing time clocks, time cards, time card racks, etc. From thirty (30) to one hundred (100) feet from the clock house, and usually connected thereto by covered walkways, were buildings (one for men and one for women, referred to hereinafter as "change house") wherein were lockers, bathing facilities, sanitary facilities, and other facilities required by the defendant's business. Underneath the change house was a concrete basement (hereinafter referred to as "bomb shelter") wherein were facilities for serving and eating food and for smoking. From three (300) to fifteen hundred (1500) feet from the bomb shelter were buildings wherein plaintiffs worked.

The distance from the nearest outer gate to the inner gate of the respective production areas was from two (2) to four (4) miles depending on the particular production area. The employees could drive their own vehicles, they could ride with another employee in his car, they could ride public carrier buses, or they could ride buses furnished by the employer. At the outer gate armed employees of the defendant were stationed to check all vehicles and all personnel seeking entrance to the reservation. Said armed employees satisfied themselves, as required by the rules and regulations of the defendant, that all of the vehicles had been inspected and approved by the defendant and bore thereon prescribed identifying patches, that the personnel were in proper physical condition and bore on their person prescribed identifying insignia, that certain prohibited articles were not carried onto said reservation, and that the vehicles and personnel conformed to all the conditions required of them by the defendant. If satisfied, the armed employees permitted the plaintiffs, and other employees, to pass through said outer gate. Once permitted to pass through the outer gate and enter upon the premises of the defendant, the plaintiffs, their actions, their conduct, and their movement from the outer gate to the inner gate of their respective production areas whereon they worked were subject to the detailed, immediate, supervised and absolute control of the defendant. Such control included, but was not limited to, the following: (1) the vehicles in which the plaintiffs rode were operated only by control of and with approval of the defendant, or after being inspected and approved by it; (2) identifying insignia must

be worn by plaintiffs at all times; (3) the route (roads) to the respective production areas was designated and no [fol. 6] deviation therefrom permitted; (4) the speed of the vehicles, together with all other traffic signals and procedures, both of a general nature and of a special nature applicable to the defendant's premises, were established and enforced by the defendant; (5) no stopping on the side of the road was permitted except in emergencies; (6) no parking on the side of the road was permitted; (7) no visiting on other production areas before proceeding on to the areas whereon plaintiffs worked was permitted; (8) no delay in movement of traffic was permitted; (9) no slighting from the vehicles and proceeding on foot was permitted; (10) no motorcycles, bicycles, scooters, horses, carriages or heavy trucks were permitted as a means of transportation of personnel; (11) the mode of transportation and travel was prescribed and was limited to the use of buses, automobiles and light trucks modified to carry personnel; (12) employees, including these plaintiffs, found off the established route were subject to immediate arrest, detention, reprimand and discharge; (13) devious and unauthorized approaches to the production areas were not permitted; (14) the time to be consumed in the movement was prescribed; (15) no movement other than a continuous, undelayed one, from the outer gate to the production areas was tolerated, except as authorized; (16) armed employees of the defendant patrolled the roads and areas to enforce the control measures of the defendant; (17) the manner of loading and unloading of buses and the parking of vehicles at the parking areas were prescribed; (18) the time for and to be consumed in the loading and unloading of passengers from the buses and the parking of vehicles on the parking area were prescribed and regulated; (19) the route from the parking area to the inner gate of the production area was designated; and (20) violations and infractions of the control measures subjected the employees, including these plaintiffs, to immediate arrest, detention, investigation, reprimand and discharge. The movement from the outer gate to the production areas was necessary to enable the plaintiffs to reach their places of work, was necessary to the productive aims of the defendant, necessitated by the physical arrangement of the Plant, and was for the benefit of the defendant.

The plaintiffs, their actions, conduct and movement through the inner gate of the production area to the clock house located on the production area wherein plaintiffs worked were subject to the detailed, immediate, supervised and absolute control of the defendant. Such control included, but was not limited to, the following: (1) no smoking was permitted; (2) running was forbidden; (3) possession of matches or cigarette lighters was prohibited; (4) loud talk and/or loud laughter was discouraged; (5) horseplay was strictly forbidden; (6) assembly of two or more in a group to stop and talk was forbidden; (7) the throwing or casting away of any article was prohibited; (8) any [fol. 7] delay in movement was forbidden; (9) bicycles, scooters or skates could not be used; (10) the roadway or walkway to be used was prescribed; (11) the person was subject to detention and search at any time; (12) the plaintiffs, and other employees, once admitted to the production area, could not leave same before the end of their scheduled work hours without first obtaining permission of the defendant, which was granted only in emergencies; (13) armed employees of the defendant were stationed at the inner gate to enforce the control measures of the defendant; (14) the plaintiffs were compelled to identify themselves to the armed employees at the inner gate by displaying prescribed identifying insignia, compelled to surrender matches and cigarette lighters, were subject to search and were, in fact, frequently searched; and (15) violations and infractions of the control measure subject the plaintiffs to immediate arrest, detention, investigation, reprimand and discharge. The movement through the inner gate to the clock house was necessary to enable the plaintiffs to reach their places of work, was necessary to the productive aims of the defendant, necessitated by the physical arrangement of the Plant, and was for the benefit of the defendant.

The defendant required the plaintiffs to present themselves at the clock house on the production line in sufficient time for them to clock in, go to the change house, divest themselves of all articles of a particular nature, such as rings, watches, bracelets, combs and purses and pocket books, change into clothing prescribed by the defendant, was exposed parts of their bodies and treat said exposed parts with preparations furnished by the defendant and

designed to prevent powder poisoning, and, in the case of powder carriers and backline workers, bathe and dress themselves completely in prescribed clothing furnished them by the defendant, and go to the bomb shelter, arrange themselves therein in a prescribed manner and upon the sounding of a signal at five (5) minutes prior to the scheduled work hours, march, in semi-military formation, along prescribed walkways to their respective places of work. Some of the plaintiffs, charged with additional duties, instead of going to the bomb shelter from the change house were instructed to and did go directly to their places of work and upon arrival thereat, began to perform the duties required of them by the defendant. Some of the plaintiffs, whose places of work were in buildings or at places in the production area more distant from the bomb shelter than were the loading buildings, were directed to and did leave the bomb shelter prior to the sounding of the signal mentioned above and proceeded on to their respective places of work so that they might arrive thereat exactly at the beginning of the scheduled work hours.

fol. 8] Some of the plaintiffs named above, whose duties were the handling and processing of explosives, were instructed and did report for duty thirty (30) minutes prior to the scheduled work hours. Other plaintiffs named above, whose duties were to act as line leader and assistant line leaders, were instructed to and did report for duty and began the performance of the duties of their employment fifteen (15) minutes prior to the scheduled work hours.

The plaintiffs, their actions, conduct and movement from the time they presented themselves at the clock house on the production line to the moment they reached their respective work places and began the performance of the duties required of them by their employment were under the direct, immediate, supervised and absolute control of the defendant. Such control included, but was not limited to, the following: (1) the walkway to be used to go from the clock house to the change house was prescribed and designated; (2) movement on said walkway must be without delay, nor was stopping, running or loitering thereon permitted; (3) no smoking was permitted; (4) the door or doors to be used in gaining entrance to

the change house was designated and the use of any other door or doors forbidden; (5) the time spent in the change house and the door or doors for leaving same were established and enforced; (6) the articles to be removed because the wearing of them at work was prohibited were set out specifically and included articles customarily and necessarily worn daily by the plaintiffs when not employed at their duties; (7) the clothing to be worn by the plaintiffs while at work was prescribed by the defendant, sold by defendant's authority upon the premises of the Arkansas Ordnance Plant; (8) the application of preparations on exposed parts of the body was required by the plaintiffs by the defendant; (9) the walkway to be used in going from the change house to the bomb shelter and the door or doors to be used to enter the bomb shelter were prescribed and the use of others were forbidden; (10) the plaintiffs must group themselves in the bomb shelter in such a manner that they could arrange themselves at the door according to the building in which they worked; (11) their formation, their gait, the walkway or walkways to be used from the bomb shelter to the places of work were prescribed, regulated, and directed by supervisory personnel of the defendant physically present and physically directing and leading said movement to places of work from the bomb shelter; (12) the plaintiffs, once clocked in, could not clock out before the expiration of their scheduled work hours without the permission of the defendant's first obtained, and granted only in emergencies; (13) the plaintiff's were subject to and were frequently directed to perform duties relating to their employment prior to the beginning of their scheduled work hours; (14) supervisory personnel of the defendant were present to enforce the control measures of the defendant, and, if need arose, armed employees of the defendant could be called from the inner gate; and (15) deviations from, violations and infractions of the control measures were not tolerated and subjected the employee to disciplinary action. The time spent by the plaintiffs from the time they presented themselves at the clock house to the time they began the performance of their duties at their work places at the beginning of the scheduled work hours was spent solely in obedience to the direction and instructions of the defendant and was

necessary to enable the plaintiffs to reach their places of work, was necessary to the productive aims of the defendant, necessitated by the physical arrangement of the Plant, and was for the benefit of the defendant.

The control measure applied to the plaintiffs from the time they entered the outer gate until they reached their respective work places at the beginning of the scheduled work hours were likewise applied to them from the time they left their respective work places at the end of their scheduled work hours until they departed through the outer gate. The activities of the plaintiffs at the expiration of their scheduled work hours were as follows: (1) they were marched in semi-military formation from their places of work to the change house, if their places of work were not in the loading buildings, they proceeded in groups under the direction of supervisory personnel from their work places to the change house; (2) in the change house, they washed the exposed parts of their bodies and treated same with preparations designed to prevent powder poisoning, removed shoes and garments required to be worn while on duty because of the nature of their work, put on their street clothes, secured those articles removed prior to the beginning of their scheduled work hours such as combs, rings, watches, purses, pocket books, etc., went to the clock house and clocked out.

The time required to go from the clock house through the inner gate and from there through the outer gate subsequent to the scheduled work hours was the same as required for the movement prior to the scheduled work hours. The activities and movements subsequent to the scheduled work hours were likewise necessary to enable the plaintiffs to retire from their places of work, was necessary to the productive aims of the defendant, was necessitated by the physical arrangement of the Plant, and was for the benefit of the defendant.

That the plaintiffs do not have possession of or access to the records showing the time shown on the clock cards, the rate of pay, the amount paid them, or records showing the control exercised over them while they were upon the [fol. 10] premises controlled, maintained and operated by the defendant. That said records are in the exclu-

sive possession and control of the defendant. Said records consist of the following: (1) The Pay Roll Record sheets of each plaintiff which show the date of employment, the hourly rate of pay, the date of pay increases, if any, the amount of such increased pay, the number of hours for which each plaintiffs were paid per day, per week, and the dates of termination; (2) the Time Clock Cards showing the hour and fractional part thereof at which each plaintiff clocked in and clocked out each day of employment by the defendant; (3) the complete set of plant Rules and Regulations compiled by the Plant Safety Division; (4) the Ordnance Safety Manual; (5) complete set of Traffic Regulations concerning the conduct of pedestrians and vehicular traffic within the plant; (6) a complete set of "Operation Orders" issued by the General Manager's Office, which control the conduct and activity of employees generally throughout the whole plant; (7) a complete set of Production Orders issued by the General Superintendent of Production concerning the productive activity and the type and manner of work of production employees; (8) a complete set of orders and regulations issued to the guards concerning identification and inspection of employees and the control to be exercised over them while upon the premises; (9) all regulations concerning the conduct and activity of employees during lunch periods or rest periods, if any; (10) a copy of the contract between the United States of America and the defendant, with all amendments thereto; (11) the map or chart of the premises involved showing the pertinent areas and distances drawn to scale; and (12) the contract, rules or regulations governing the operation of ~~public carrier~~ buses on the premises of the Arkansas Ordnance Plant.

That plaintiffs and each of them are entitled to recover of and from the defendant for all time worked in excess of forty (40) hours per week as provided for by the Fair Standard Labor Act for which they have not yet been compensated, said recovery to be based upon the rate of one and one-half times the regular base pay rate, for an equivalent sum as liquidated damages and for an Attorney's fee. That defendant should be required to permit plaintiffs or their Attorney to inspect and copy each of the documents mentioned above.

VI.

Wherefore, plaintiffs pray that defendant be compelled to permit plaintiffs to inspect and copy each of the documents enumerated in paragraph five (5) of this complaint, as well as any other documents which might be relevant [fol. 11] and pertinent to the allegations of this complaint, and that plaintiffs and each of them have and recover of and from the defendant a sum of money equal to one and one-half times the base pay rate per hour for all time worked in excess of forty (40) hours per week for which they have not been paid, a like sum as liquidated damages, a reasonable Attorney's fee, costs and all proper relief.

C. H. EARL,

J. W. McHUGHES,

GERLAND P. PATTEN,

Gerland P. Patten,

Attorney for the Plaintiffs,

918 Pyramid Building,

Little Rock, Arkansas.

(Endorsed) Filed in U. S. District Court on February 6, 1947.

[fol. 12]

Answer

Comes the defendant, and, in answer to the complaint of the plaintiffs, states:

1. Defendant states that it has been unable to check the employment records of the Arkansas Ordnance Plant, and that therefore it does not have sufficient information or knowledge to form a belief as to whether all of the plaintiffs were employed at the Arkansas Ordnance Plant and therefore denies same.

2. Defendant admits that it is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and that during the times mentioned in the complaint it was authorized to and did engage in business in Pulaski County, Arkansas.

3. Defendant denies that plaintiffs were employed under written contracts of employment, and denies that plaintiff's employment was evidenced by written instruments.

4. Defendant denies each and every allegation of the complaint not herein specifically admitted.

5. Defendant denies that it was engaged in the production of goods for commerce and denies that plaintiffs were engaged in commerce or engaged in the production of goods for commerce.

6. Defendant states that the Arkansas Ordnance Plant at Jacksonville, Arkansas, was at all times mentioned in the complaint owned by the United States Government; that all materials, tools, improvements, machines, and other property thereon were the property of the United States Government; that said Ordnance Plant was operated by the Government through the agency of this defendant. That under the contract between this defendant and the United States Government as interpreted, executed, and acted upon by the parties to said contract, the defendant, Ford, Bacon & Davis, Inc., was at all times relevant hereto as respects the employment of plaintiffs the agent of the United States; that plaintiffs were the employees of the United States, and that the Fair Labor Standards Act is not applicable to the plaintiffs as such employees or to the United States as an employer.

7. Defendant states that the services rendered by the plaintiffs at the Arkansas Ordnance Plant were for the sole and exclusive benefit of the United States Government; that, in effect, plaintiffs were employed by the [fol. 13] United States; that their services were performed under and subject to the supervision and control of the United States; that the United States Government is the real party in interest herein; and that as employees of the United States the plaintiffs were not subject to the provisions of the Fair Labor Standards Act.

8. Defendant states that pursuant to the instructions of the United States Government it paid the plaintiffs for all

time normally considered as working time; that said payments were made by check; that accompanying said checks were written statements showing the hours worked by each of the plaintiffs and the rates paid therefor; that plaintiffs accepted said checks and the statements attached thereto without objection. That the statements attached to said checks constitute accounts stated, and the payment and acceptance of the sums shown to be due thereon constitute accord and satisfaction, and that plaintiffs are estopped to claim any additional sums by virtue of work or labor performed at the Arkansas Ordnance Plant.

9. Defendant pleads the provisions of Section 8932 of Pope's Digest of the Statutes of the State of Arkansas as a complete defense to all claims set forth in the complaint which arose prior to February 6, 1945.

10. In the alternative, defendant pleads the provisions of Section 8928 of Pope's Digest of the Statutes of the State of Arkansas as a complete defense to all claims set forth in the complaint which arose prior to February 6, 1944.

11. Defendant states that it appears from the complaint that the plaintiffs seek to recover wages for time consumed in traveling to and from their places of work and for other activities engaged in preliminary and postliminary to their regular hours of work. That said activities and travel time were not compensable by express provision of any written or unwritten contract in effect at the time of the employment of the plaintiffs or by any custom or practice in effect at such time at the Arkansas Ordnance Plant.

12. Defendant states that it has in good faith endeavored to discharge all obligations due plaintiffs under and by virtue of their contracts of employment at the Arkansas Ordnance Plant; that the plaintiffs, and each of them, were paid by the defendant in accordance with regulations, orders, and rulings of the Ordnance Department of the United States Army, an agency of the United States, and that the said Ordnance Department approved and directed all wage and salary payments to employees at the Arkansas Ordnance Plant.

[fol. 14] Wherefore, defendant prays that the complaint of the plaintiffs be dismissed; that defendant have judgment for its costs herein expended, and for all proper relief.

OWENS, EHRMAN &
McHANEY,

By E. L. McHaney, Jr.,
923 Pyramid Building,
Little Rock, Arkansas.

Attorneys for Defendant.

Request for Jury Trial

The defendant hereby requests a trial by jury in this case.

OWENS, EHRMAN &
McHANEY,

By E. L. McHaney, Jr.,
923 Pyramid Building,
Little Rock, Arkansas.

Attorneys for Defendant.

The above and foregoing answer has been served upon the plaintiffs by delivering a true copy thereof to their attorney of record, the Honorable Gerland P. Patten, at his correct address, 918 Pyramid Building, Little Rock, Arkansas, on this 22 day of May, 1947.

OWENS, EHRMAN &
McHANEY,

By E. L. McHaney, Jr.,
923 Pyramid Building,
Little Rock, Arkansas.

Attorneys for Defendant.

(Endorsed): Filed in U. S. District Court on May 23, 1947.

[fol. 15] Motion for Summary Judgment

The defendant's motion for summary judgment alleged:

(a) That the plaintiffs were not engaged in commerce or in the production of goods for commerce.

(b) That the plaintiffs were employees of the United States Government and exempt under the Wage and Hour Law.

(c) The Portal-to-Portal Act bars the plaintiffs.

That there is no genuine issue as to any material fact and the defendant is entitled to judgment.

Affidavit of Ellis Brown

He was employed by the War Department and his duties were to check the defendant's records, verify expenditures, verify purchases and O. K. them for payment.

The defendant sent out bids upon which purchase orders were made, such being delivered to a Government representative for approval and being sent to the various subsequent bidders and when the material was delivered to the Plant it was inspected by the defendant and the Government, and if accepted a check was drawn against funds advanced by the Government in payment therefor.

A substantial portion of the materials purchased by the defendant was from outside the State of Arkansas, and after being processed at the Plant they were shipped to the various military facilities outside and inside the State.

The materials processed were munitions of war. They were loaded for shipment by the defendant's employees under the supervision of Government employees.

[fol. 16] The material was shipped on Government bills of lading at a reduced freight rate and no transportation tax was paid on such shipments. The items manufactured were fuses, detonators, primers and other small articles used to discharge various munitions and powders. A great deal of such went directly over seas.

All of the money used by the defendant was supplied by the Government, some of it being earmarked for specific purposes and the other being a general fund. All of the material for the manufacture of the products was furnished by the Government, who set up schedules of production of such, this material being known as "free issue", such being procured by the Government direct, a good portion of such being shipped on Government bills of lading.

Instructions were issued to take title to all property at the point of origin in order that the same might be declared military property and thus be shipped at a reduced rate.

All expenditures made by the defendant were approved by the Ordnance Department before payment was made. No Arkansas sales tax was paid by the defendant. The Ordnance Department issued rules and regulations which had to be complied with by the defendant. At first all telegrams were made at Government rates, and later at commercial rates. No communications tax was paid on any telegraph, telephone or teletype charges.

The electric power was furnished the defendant under a direct contract with the Arkansas Power and Light Company.

Many times unfinished schedules of other plants were arbitrarily foisted upon the defendant.

That portion of the freight which was shipped at commercial rates was very small.

In the event goods shipped to the Plant were not acceptable to the Government it would be returned to the vendor.

The defendant used none of its money at any time, such being furnished by the Government. The Government paid direct all Government bills of lading and all telephone and teletype charges.

[fol. 17] The plant operated by the defendant was at all times under the close supervision of military personnel and Government inspectors were at all times on the premises. The Government owned all the lands, buildings, materials, tools and property of every kind on the plant premises.

Affidavit of W. F. Whittle

He has been employed by the defendant since 1942. First he was a cost accountant. Later, he was pay master, and as such had charge of the records pertaining to time and payrolls.

All of the money used by the defendant in the operation of its plant was furnished by the Government. This included payments to personnel. All the physical properties at the plant site were owned by the Government. The Government deposited money in a local bank, which was from time to time reimbursed as the defendant made withdrawals therefrom.

The defendant spent \$15,495,437.44 for materials. The Government furnished materials of the approximate value of \$275,854,354.21. (\$275,854,354.21). For direct materials the Government expended \$9,574,602.34, and the Government furnished material of the approximate value of \$275,768,000. The contractor disbursed for the Government \$84,220,301.78. The total Government expenditure was \$279,714,018.32.

Ninety per cent (90%) of the materials worked on were furnished by the Government as "free issue". No sales tax was paid the State of Arkansas on materials purchased by the defendant.

The defendant was required to follow Ordnance Procurement Regulations. All materials bought by the defendant had to be consigned to the Contracting Officer in the defendant's plant, who was an Army officer.

[fol. 18] When material was shipped to the defendant on commercial bills of lading a freight rate adjustment was made converting the bills of lading into a Government bill of lading, thus reducing the freight rate.

The Government retained the right to discharge any employee and exercised control over the hiring of personnel.

The defendant's plant was classified as an ordnance establishment, such being under the direct control of the Chief of Ordnance, and the maximum number of Army

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officers at the plant was thirty (30), which number was reduced during the later days of operation to about five or six.

The defendant had no discretion as to the kind or amount of material to be processed. The Government shipped free issue to the defendant with instructions to process such.

The defendant had to comply with all provisions of the Ordnance Safety Manual relative to its operation. The defendant was exempt from the payment of transportation and Federal excise taxes.

Some items used by the defendant had to be procured through the Treasury Department. Title to all the land and physical properties at the defendant's plant was owned by the Government, which was turned over to an Army officer, who was accountable to the Government for all such properties.

All payrolls were audited by Ordnance Department and in many instances Ordnance accompanied the defendant's employees who were delivering payroll checks.

All reports of hire and fire, change in classification, change in wage rates, were approved by the Government before they became official. The Ordnance Department supervised the defendant's activities at all times and controlled the direct method of doing the work.

[fol. 19] All employees traveling on official business were exempt from transportation tax.

The defendant was required to pay Federal Old Age Benefits taxes and Unemployment Compensation taxes and was required to carry Workmen's Compensation insurance.

The Government set up a fund which was used by the defendant for the carrying on of the activities of the plant, and this fund was drawn upon by the defendant.

The material used at the plant, purchased outside the State was charged on Government bills of lading and consigned to Ordnance Property Officer, care of the defendant, Jacksonville, Arkansas.

All properties shipped from the plant were shipped on Government bills of lading to a Government agent at another Ordnance plant or to a Port Transportation Officer for overseas shipment.

All employees were paid for the work performed by them, which was compensable under the terms of their contract or by custom and practice in effect at that time.

There was no agreement to pay for travel time and there was no custom or practice calling for the payment for such time. The same was true as respects lunch periods.

All employees were paid for work performed in conformity with and in reliance on regulations, orders, rulings, approvals and interpretation of the Ordnance Department, who approved and directed all wage payments.

Affidavit of A. R. Clarke

He was Personnel Director for the defendant from 1941 to 1945. As director of Personnel his duty was to employ and terminate personnel. He assisted in setting up wage schedules which were submitted to and approved by the Ordnance Department. After such were approved the defendant was not at liberty to deviate from such payments. No wage payments were made except upon the approval of the Ordnance Department.

All salary payments were made by the defendant, in good faith, in conformity with the reliance on regulations, orders, rulings, approvals and interpretations of the Ordnance Department.

There was no contract in force providing for the payment of travel time or for lunch period. It was necessary for him on several occasions to go to Washington for the purpose of obtaining approval for changes in wages and classifications.

An Army officer was at the plant to supervise the performance of the defendant's contract with the Government.

Affidavit of Clifford Shaw

I was employed by the defendant in April, 1942, and terminated in October, 1945. He supervised and directed the work necessary to meet production schedules. The defendant engaged solely in the manufacture of munitions of war.

The Government would forward the defendant production orders and supplied the material for their completion.

The Government supplied the manufacturing method or process to be used as evidenced by detailed drawings and specifications.

The Government specified step-by-step procedure in the manufacture of the product, as well as the procedure to be followed in mixing powders and these procedures had to be followed.

[fol. 21]

(Exhibit 1)

The following is an abstract of the pertinent provisions of the contract between Ford, Bacon & Davis and the War Department, pursuant to which the Arkansas Ordnance Plant was constructed and operated.

Cost-Plus-A-Fixed-Fee Contract No. W-ORD-519
DA-W-ORD-6

This contract is authorized by the following laws: The Act of July 2, 1940 (Public Law No. 703, 76th Congress), the Act of March 11, 1941 (Public Law No. 11, 77th Cong.), and the Act of June 30, 1941 (Public Law No. 139, 77th Cong.).

Contract is signed by L. H. Campbell, Jr., Brig. Gen. U. S. Army.

Contract made July 15, 1941, between the Government and Ford, Bacon and Davis, Inc., hereinafter called the Contractor, witnesses that:

Whereas government desires to have contractor design, construct, equip, operate and train personnel for a new ordnance facility, and whereas this contract has been

negotiated as authorized by law and the Secretary of War, it is hereby agreed as follows:

Title I. Design, Engineering and Construction.

Article I A—Description Of New Ordnance Facility.

1. The plant shall be located on a site to be furnished by the government for the loading of fuzes, boosters, primers and detonators based upon a certain estimated daily capacity as follows: (Omitted as not material.)

2. Said plant shall consist of necessary building, equipment, and storage facilities to keep on hand about 30 days' supply of incoming materials and about 60 days production of finished product.

3. Plant shall conform to certain drawings attached and to be furnished by the contracting officer.

Article I B Statement of Work.

1. Contractor shall furnish the labor, materials, tools, machinery, equipment, etc. and supplies not furnished by Government and do all things necessary in construction of plant, installation of equipment and the furnishing of architectural and engineering services.

2. The Contracting Officer appointed by the Chief of Ordnance will supervise general layout and preparation of detailed plans, and all designs must have his approval and the performance of construction work of the entire project will be under supervision of Contracting Officer appointed by the Quartermaster General.

3. The Contracting Officer may issue additional instructions or require additional work without notice to [Vol. 22] sureties. Also, unless capacity of plant is changed as much as 25% there shall be no change made in the fixed fee set for its construction.

Article I C. Estimates.

It is estimated that the plant will cost \$14,812,188.00 excluding the contractors fee, that the plant will be completed within 10 months, but such estimates are not guaranteed to be correct.

Article I-D Consideration.

The contractor shall receive the following: (a) Reimbursement for expenditures as provided in Title V. (b) Rental for contractor's equipment as provided in Title V. (c) Fixed fee of \$445,580. The fixed fee as set forth is based upon the premise that the contractor will subcontract plumbing, etc.

Article I-E Character and Extent of Architectural and Engineering Services.

Contractor shall make all surveys, prepare layout plan, adapt government designs and drawings to the project, obtain necessary approval from all state, local and federal authorities, prepare estimates and shall submit plans and specifications to contracting officer for his approval, prepare all progress reports and records as work progresses.

Contractor shall consult and advise with the Contracting Officer, shall submit to him a schedule showing the order in which the work is to be done and the estimated completion dates. In the event the contractor falls behind in the completion schedule the Contracting Officer may take whatever steps necessary to insure that schedules will be met. He may also reduce the amount of the contractor's personnel and/or overhead if he deems either to be excessive.

Government shall furnish the contractor such available schedules, sketches, data and pertinent information on hand. All of contractor's notes and other data concerning construction and equipping of the plant shall become the property of the Government. Contractor may employ such extra technical advice as the Contracting Officer shall deem necessary.

Article I-F Rates of Wages—Non Rebate.

1. In accordance with provisions of 40 U. S. C. 276a and 276a-1 the following provisions shall apply to the work under this Title I:

[Pol. 23] a. Contractor or subcontractors shall pay all mechanics and laborers not less often than once a week, and without subsequent deduction or rebate on any ac-

count, wages at not less than the rate established by the Secretary of Labor for the work herein specified, such scale of wages to be posted in a prominent place at the work site. Government may withhold payments to Contractor to ensure compliance with this provision.

b. If contractor fails to comply with above provision as to minimum wages, the contract can be terminated, completed by the Government and the contractor held liable for any excessive costs as the result of the Government's completion of the contract.

2. Following provisions shall apply to work under this Title I:

a. All wage rates, including compensation for overtime under Article I-G of Title I, for laborers and mechanics shall be approved in writing by the Chief of Branch or his representative. In the event Contractor should pay greater wages than those approved, it cannot be reimbursed for such expenses occasioned by additional payments.

b. Contractor shall attach an affidavit to each weekly payroll to be furnished to Contracting Officer in the form required by the Secretary of Labor by regulation promulgated at 6 F. R. 1211 pursuant to 40 U. S. C. 276b, and c, stating under oath that full weekly wages have been paid to those whose names appear thereon and that no rebates or deductions have been or will be made. Contractor shall comply with all applicable requirements of regulations issued by the Secretary of Labor pursuant to the above Act. The contractor shall make similar requirements of his subcontractors.

Article I-G Eight Hour Law - Overtime Compensation.

No laborer or mechanic doing any part of the work contemplated by this Title I in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work at the site thereof, except upon the conditions that compensation is paid to such laborer or mechanic in accordance with the provisions of this Article. The wages of every laborer and mechanic employed by the Contractor

[fol. 24] or any subcontractor engaged in the performance of this Title I shall be computed on a basic rate of eight hours per day and work in excess of eight hours per day is permitted only upon the conditions that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this Article a penalty of five dollars shall be imposed upon the Contractor for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this Article and all penalties thus imposed shall be withheld for the use and benefit of the Government: Provided, that this stipulation shall be subject in all respects to the exceptions and provisions of 40 U. S. C. Secs. 321, 324, 325, and 326 relating to hours of labor, as in part modified by the provisions of Section 5(b) of Public Act No. 671, 76th Congress, Approved June 28, 1940 and Sec. 303 of Pub. Act. No. 781, 76th Con., app. Sept. 9, 1940, relating to compensation for overtime.

Title II. Procurement of Production Equipment.

Article II-A Statement of Work.

1. The Contractor shall, in the shortest reasonable time, determine the production equipment requirements and shall proceed to do all things necessary to their procurement.

2. Government reserves right to furnish such production equipment as it sees fit, provided same is suitable. Contractor may manufacture equipment subject to approval by Contracting Officer, and Government may procure such equipment separately in event it is able to do so at a better price than that furnished by the Contractor.

Article II-B Estimates.

Estimated cost, subject to change, is \$6,000,000.00.

Article II-C Consideration.

Consideration shall be reimbursement for expenditures as provided in Title V plus a fixed fee of \$40,000.00.

Article II-D Eight Hour Law—Overtime Compensation.

The provisions of Article I-G of Title I shall apply to the work under this Title II.

[fol. 25] Title III. Training of Key Personnel (Optional).

Article III-A Statement of Work.

1. Upon notice to contractor by government, the contractor shall hire and train key personnel in the duties necessary to the operation of the plant in the event the government calls upon the contractor to operate same.

2. Such trained personnel shall be held in readiness, upon direction of the contracting officer, in case such notice of intent to operate the plant shall be given.

3. The character and extent of work to be done under this Title shall be subject to the approval of the Contracting Officer.

Article III-B Estimate.

Estimated cost is \$150,000.00.

Article III-C Consideration.

Consideration shall be reimbursement of expenses, plus a fixed fee of \$1.00.

Article III-D Eight Hour Law—Overtime Compensation.

Provisions of Article I-G of Title I shall apply to this work.

Title IV. Operation of Plant (Optional).

Article IV-A Statement of Work.

1. If notified by the Contracting Officer to do so, the contractor shall undertake all preparations necessary to the operation of the plant, including training of additional personnel.

2. As each unit of plant is completed the Contractor shall proceed to operate it as directed from time to time by the Contracting Officer.

3. When the plant is completed to the extent necessary to its operation the Contractor shall notify the Contracting Officer, and shall operate the plant for a period of 12 months following this notice.

4. The 12 month period may be extended for another 12 months upon not less than 90 days' written notice to the Contractor at the option of the Government.

5. Work under this Title IV shall be performed in accordance with specifications to be furnished by the Contracting Officer.

6. Government shall furnish all explosives and all metal [fol. 26] parts for the loading of the ammunition, including shipping materials and containers, when and as requisitioned by Contractor.

7. In carrying out the work under this Title IV the Contractor is authorized and shall do all things necessary or convenient in the operating and closing down of the Plant, or any part thereof, including (but not limited to) the employment of all persons engaged in the work hereunder (who shall be subject to the control and constitute employees of the Contractor), the providing of all materials and supplies except such as the Government is to furnish or supply as elsewhere specifically provided herein, the storage of materials and supplies and of the finished products to the extent of the storage facilities at said Plant, the preparation of the product for shipment and the loading of same on cars or other carriers in accordance with the Government's shipping instructions.

8. In providing materials and supplies as provided in Section 7, next above, the Contractor shall be free (but shall not be obligated) to use any materials or supplies of its own manufacture, upon advising the Government in advance as to the prices at which and the conditions upon which such materials and supplies will be provided, which prices and conditions, however, shall not be less favorable than those quoted to third parties for similar quantities and deliveries, and may be quoted without regard to the provisions of Section 6 of Article V-A of Title V. In the event the Government is able to obtain materials or supplies of equal quality and quantity at a lower price or on

more favorable conditions from any responsible competitive source or from its own manufacture, it may undertake to do so upon so informing the Contractor within ten (10) days after being advised of the Contractor's price for such material and supplies.

9. The Contractor shall maintain a satisfactory system of inspection, gaging and gage checking concurrent with operations, and no ordnance material shall be submitted for the Government inspector's approval which has not previously been inspected by agents of the Contractor and found to be up to the contract standard.

[fol. 27] Article IV-B—Estimates.

Estimated cost under Title IV will be \$33,525,000.00.

Article IV-C—Consideration

Contractor shall be reimbursed for expenditures, and shall receive a fixed fee of \$540,000.00; and in the event of continued operation shall receive \$420,000.00 for the next twelve months of continued operation.

Article IV-D—Walsh-Healey Act

The following representations and stipulations pursuant to the Walsh-Healey Public Contracts Act (41 U.S.C.A. 35-45) shall apply to the operation of the plant. (Sub paragraphs a-f inclusive are verbatim repetitions of the provisions of 41 U.S.C.A. 35-36 inclusive). Sub paragraphs g-h provide that the contractor shall post a copy of the foregoing stipulations in a public place at the work site and shall keep such employment records as are required by the Secretary of Labor.

2. Paragraph b of Section 1, above, with respect to minimum wage rates is inoperative due to lack of determination by the Secretary of Labor of prevailing minimum wage rates for the industry involved.

Title V. Cost of the Work and Payment Therefor.

Article V-A—Reimbursement for Contractor's Expenditures.

1. The contractors shall be reimbursed for the following:

- a. All labor, materials, tools, machinery, equipment, and services used in the work.
- b. All subcontracts.
- c. Transportation, loading, unloading and storage charges on material, supplies and equipment.
- d. Such transportation and travel expenses of personnel as may be approved by the contracting officer.
- e. Expenses of procuring labor and material, etc.
- f. Salaries of employees of the contractor engaged directly in the work provided in this contract.
- g. Buildings, fixtures, and equipment necessary for offices, commissaries and other facilities and the cost of operating same.
- h. Premiums on such bonds and insurance policies as required.
- [fol. 28] i. Losses and expenses sustained by the contractor and approved by the contracting officer.
- j. The cost of reconstructing or replacing any of the above.
- k. Employer's contribution under the Social Security act and any other disbursements required by law.
- l. Costs in connection with reworking rejected material and for material finally rejected.
- m. Extra payments to employees made under welfare or other employees relations plans or incurred pursuant to a collective bargaining agreement.
- n. Accounting expenditures in connection with audit.
- o. Expenses in connection with any temporary or permanent closing of the plant.
- p. \$2,000 per month for all services performed at the contractor's New York offices.
- q. Expenses incidental to the payroll such as cost of guards and check cashing facilities.
- r. Rental actually paid by the contractor and approved by the Contracting Officer.

s. Loading and unloading of construction plant and repairs and maintenance incidental thereto.

t. Repairs and parts.

u. Temporary rights in land required by the work.

v. Such other items as should, in the opinion of the Contracting Officer, be included in the cost of the work.

2. For the use of its equipment rentals shall be paid to the contractor based upon standard rates approved by the office of the Quartermaster General and the Government may at its option purchase any part of the construction plant owned by the contractor by paying a stipulated price set forth in this section.

3. Government reserves the right to furnish any materials, equipment, tools, or services necessary to completion of the work.

4. The Government reserves the right to pay directly to the common carrier all transportation charges.

[fol. 29] 5. The Government reserves the right to pay directly to the person concerned all sums due from the contractor for labor, materials, or other charges.

6. No salaries of contractor's executives, and no other expense unless specifically authorized herein shall be included in the cost of the work.

7. The contractor shall take advantage of all discounts, rebates, allowances, salvage, etc. and if he fails to do so may not be reimbursed for same.

8. All revenue received by contractor from operation of hospital, commissaries, or other facilities shall be accounted for by it and applied in reducing the cost of the work.

Article V-B—Payments—Reimbursement for Cost

1a. Reimbursement will be made upon delivery to the Contracting Officer of the original payrolls or receipted invoices for materials, etc.

2. (Omitted as immaterial)

3a. The fixed fee shall be paid in monthly partial payments less 10% for work done under Article I-D of Title I.

b. Same provision as set forth above as to work done in Article H-C of Title II.

c. (Omitted)

(Paragraphs D and E omitted as immaterial)

4. If contractor fails to pay bills for labor, material, etc. promptly contracting officer may withhold payments due contractor and may take payments directly to them.

5. Upon completion of the work the balance due the contractor shall be paid.

Article V-C—Advances

1. Upon request of the contractor and approval of the Chief of Ordnance the contractor may be advanced up to 30% of the estimated cost of the work.

2. (Omitted as not material)

[fol. 30] 3. (Omitted as not material)

4. All advance payments shall be deposited in a special bank account separate from the contractor's general funds and used as a revolving fund for carrying out the purposes of this contract, and the Government shall have a lien on any balances to secure the repayment of such advances superior to that of the Bank.

5. Contractor may make advance payments to third parties for materials or supplies upon approval by the contracting officer.

Title VI—Termination.

Article VI-A—Termination by Government.

1. This contract may be terminated by written notice from the Contracting Officer at any time and such work shall be terminated immediately.

2. In event termination is because of the fault of the contractor, the Contracting Officer may enter upon premises and take possession of all materials, tools, etc. for the pur-

pose of completing the contract or may employ other persons to do so.

3. Upon termination of the contract full and complete settlement of all claims arising out of this contract shall be made as follows: (Balance omitted as not material)

Title VII—General.

Article VII-A—Responsibility of Contractor.

1. All work under Title IV of this contract to be at the expense of the Government including loss, expense, or damage of any kind whatsoever except such as may be occasioned by the personal failure on the part of the officers and employees of the contractor to exercise good faith and ordinary care.

Article VII-B—Contingencies.

The contractor shall be excused for delays in performance occasioned by accident, sabotage, on materials or labor shortage, labor disputes, etc. and shall be liable for loss or damage only to the extent that same is due to its corporate officials and supervisors failing to exercise good faith or ordinary care.

[fol. 31] Article VII-C—Changes.

Changes in the work under Title II, III and IV may be made by the Contracting Officer, and if such changes result in an increase in the amount of work the amount of the fixed fee may be changed in writing. In the event of disagreement the same shall be settled as provided in Article VIII-N.

Article VII-E—Materials and Workmanship.

The work and material shall be of the best and most workmanlike quality unless otherwise approved by the Contracting Officer.

Article VII-F. Records and Accounts in Inspection and Audit.

The contractor agrees to keep records and books of account on a recognized cost accounting basis and the contracting officer shall at all times have access to the books, records, premises, etc.

Article VII-G—Special Requirements.

The contractor hereby agrees that it will:

1. Procure and maintain such bonds and insurance as may be required by the Contracting Officer.

2. Procure all necessary permits and licenses, obey and abide by all applicable laws, regulations and ordinances and other rules of the United States of America, State, territory, or subdivision thereof wherein the work is done or of any other duly constituted public authority.

3. Reduce to writing contracts made by it in excess of \$2,000, make all such contracts in its own name and not bind or purport to bind the Government thereunder. No purchases in excess of \$500 shall be made without approval of the Contracting Officer.

4. Will make no subcontract without approval of the Contracting Officer.

5. Maintain a duly qualified representative at the work site to receive and execute such notices, directions, and instructions as the Contracting Officer may give under the terms of this contract.

6. Contracting Officer may require contractor to dismiss any employee deemed incompetent or whose retention is not in the public interest, subject to appeal under provisions of Article VII-N.

7. Furnish such equipment and machinery within ten days of the date on which they are stated to be available. [fol. 32] Failure to do so will result in their replacement at the cost of the contractor.

8. Use its best efforts to protect and ~~subserve~~ the interest of the Government.

Article VII-II—Preference for Domestic Articles.

In performance of the work covered by this contract only materials mined, produced or manufactured in the United States shall be used unless excepted by the Secretary of War.

Article VII-I—Convict Labor.

Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

Article VII-J—Workmen's Compensation Laws.

The contractor and his subcontractor shall maintain workmen's compensation insurance for the protection of its employees as may be required by Federal or State laws.

Article VII-K—Accident Prevention.

Contractor will comply with safety requirements deemed necessary by the contracting officer and will report to him all cases of death, injury, and occupational disease arising out of work under this contract.

Article VII-L—Officials Not to Benefit.

No member of Congress or resident commissioner shall be admitted to any share or benefit under this contract.

Article VII-M—Covenant Against Contingent Fees.

(Omitted)

Article VII-N—Disputes.

All disputes arising under this contract shall be decided by the contracting officer subject to written appeal by the contractor within 30 days to the Chief of Branch, and in certain cases the decision of the Chief of Branch may be

appealed by the contractor to the Secretary of War whose decision shall be final.

Article VII-O—Contractor's Organization and Methods.

Contractor shall submit to the contracting officer a chart showing the organization and a description of the duties performed by each position. There shall also be submitted statements of procedure as to all operations engaged in by the contractor such as purchasing, disbursing, accounting, employment, transportation, etc.

[fol. 33] Article VII-P—Assignment of Claims.

Neither this contract nor any interest therein may be assigned or transferred.

Article VII-Q—Loading and Unloading Railway Cars.

Contractor shall load and unload all railway cars promptly upon their arrival.

Article VII-R—Notice to Government of Labor Disputes.

When actual or potential labor dispute delays or threatens performance of Title I of this contract, notice shall be given to the Chief of Construction Division O. Q. M. G.

Article VII-S—Approval Required.

This contract shall not be binding until approved by the Secretary of War.

Article VII-T—Statutory Provisions.

The undertaking to comply with the various statutory requirements hereinbefore set forth shall be operative only to the extent that such statutory requirements are applicable.

Article VII-U—Definitions.

(Omitted)

Article VII-V—Racial Discrimination.

Contractor shall not discriminate against any worker because of race, creed, color or national origin.

Article VII-W—Alterations.

(Omitted)

In Witness Whereof the parties hereto have executed this contract in triplicate as of the day and year first above written.

Signed by various representatives of the United States of America and Ford, Bacon, and Davis, Inc.

(fol. 34)

Exhibit No. 2

Ford, Bacon & Davis, Inc.
Arkansas Ordnance Plant
Little Rock, Arkansas

Statement Of Production Costs
As of May 10, 1946.

Contractor's Expenditures	
501 Gross Payrolls	\$ 65,483,577.61
502 F.O.A.B. Taxes (Employer's Portion)	614,369.48
503 Arkansas Unemployment Compensation Tax	1,737,118.67
504 Workmen's Compensation Insurance	1,561,704.32
505 Federal Excise Tax	193,604.81
506 Group Life & Hospital Insurance (Employer's Portion)	170,477.60
507 Purchased Direct Materials	9,574,602.34
508 Indirect Materials & Supplies	5,920,835.10
509 Other Operating Expense	869,216.14
551 Revenues Credited to Operating Cost	1,131,867.75 Cr.
552 Discount Taken	53,556.39 Cr.
<hr/>	
Total Contractor's Disbursements—Reimbursable Items	\$ 81,221,361.78

Disbursement of Government funds by Contractor, reimbursed by Government.

Government Expenditures

	Direct Materials, Government Supplied, Free Issue (Estimate)	\$275,768.40 Cr.	
520	Direct Government Expenditures—Expenditure Order No. 3	655,421.04	
528	Indirect Materials—Government Furnished	86,354.24	
533	1014 Voucher Credit—Sale of Services	39,792.68 Cr.	
521	Local Ordnance Administrative Expense—Salaries & Wages	1,727,401.83	
522	Contractor's Fixed Fee Paid	1,517,334.32	
	Total Government Expenditures **		\$279,714,918.32
533	Rework of Components	39,792.87 Cr.	
533A	Rework of Packing Materials	185,741.16 Cr.	
531	Construction Cost Charged Operations in Error	3.35 Cr.	
620	Materials, Supplies & Services Furnished to the Government	932.73 Cr.	
536	Materials Manufactured for Inventory	121,971.96 Cr.	
			\$ 347,442.04 Cr.
	Total Operating Costs		\$363,586,878.06
	Credits To Operating Costs		
530	Project Charges to Capital Expense	479,716.75 Cr.	
531	Project Charges to Other Procurement Authorities	604,399.81 Cr.	
55	Total Credits to Operating Costs		784,116.62 Cr.
	Total Net Production Costs		\$362,802,761.44

[fol. 35] Exhibits Attached to Affidavit of W. F. Whittle.

Exhibit 2A—photostatic copy of part of letter, addressee not shown, stating policy of Department of Revenue of

** Direct Expenditure by Government applicable to plant operations.

State of Arkansas to be not to charge sales and gasoline tax to purchases made by contractor on fixed fee basis if the cost of the materials, supplies, etc. is to be reimbursed by the government and to be considered in computing the fee of the contractor.

Exhibit 3—excerpts from ordnance procurement [instructions] providing that the contractor operating the establishment to designate a property accountable officer who will be responsible for all property used in the execution of the contract; that title to material, supplies, etc., shall be taken in the government at point of origin if it will save costs and will not cause delay to the execution of contract; that the facility shall be considered a military reservation; and defining the duties of the commanding officer thereof; and defining the jurisdictional status of the Arkansas Ordnance Plant as under the jurisdiction of the Federal Government responsibility for plant protection in the Ordnance Department.

Exhibit 3A—Purchase Order form No. 11-b, regular form of purchase order showing "operator: Ford, Bacon & Davis, Inc., Contract No. W-ORD-519; DA-W-ORD-6, Ship to: Ordnance Property Officer, Jacksonville, Arkansas; for Account of Operator: Ford, Bacon & Davis, Inc., signed by Ford, Bacon & Davis, Inc., operator, as Purchasing Agent, entered on purchase order register by approved: for the Commanding Officer".

Exhibit 3b—assignment of Army Officers at the Arkansas Ordnance Plant of December 2, 1942, issued by the Commanding Officer of the establishment. Assignments included that of Commanding Officer, Administrative Officer, Transportation Officer, Executive Officer, etc.

Exhibit No. 4—Ordnance Safety Manual. The manual prepared by the Office of Chief of Ordnance, United States Army and purporting to be "regulations governing the manufacture, storage, loading and handling of military explosives and munitions at establishments of the Ordnance Department, U. S. Army." This manual designed to apply to all establishments, both government owned and operated and government owned but privately operated. The detailed provisions are not shown, but the manual controlled the manufacture, storage, etc. of explosives and

munitions at the Arkansas Ordnance Plant insofar as the provisions of said manual were applicable.

Exhibit 5—consists of a series of letters, indorsements thereto, and telegrams relating to effort of the Operator of the Plant, Ford, Bacon & Davis, Inc., to increase the beginning wage rate of janitors and janitress. Letter to Commanding Officer, Arkansas Ordnance Plant from Ford, Bacon & Davis, Inc., transmittal of same to Office, Chief of Ordnance, and information that War Department Wage Administration Agency, Washington, D. C. had denied request; appeal by Ford, Bacon & Davis from the denial. The War Labor Board had designated the War Department Wage Administration Agency to handle wage matters arising in facilities concerning the War Department and had delegated the Agency the powers given to the War Labor by executive order, acts of congress, etc.

Exhibit 6—series of letters showing effort on part of Ford, Bacon & Davis to increase beginning wage rate of "laborers". Denial of same by War Department Wage Administration Agency wherein it was said:

"Under authority granted to the War Department Wage Administration Agency in connection with Executive orders No. 9250 and 9328 by the National War Labor Board (General Order No. 14) and by the Commissioner of Internal Revenue (Letter of 24 December 1942) approval is denied the request of Ford, Bacon & Davis, Incorporated, Operating contractor at the Arkansas Ordnance Plant to increase the rate range for the job classification "Laborer" from \$40-43-47-51-55 per hour to \$51-59-62-66 per hour.

Exhibit 6a—Inter-office Communication from Chief Project Auditor to Project Comptroller advising that the Government could not reimburse Ford, Bacon & Davis, Inc., for wages paid to three named individuals until authority of employment had been signed by Commanding Officer.

Exhibit 7—Letter from Assistant Commanding Officer to Commanding Officer advising installation of certain valves on machinery used in the operation of the plant.

ing of those terms as used in the Fair Labor Standards Act. (b) That the plaintiffs were not employees of the United States Government, but were employees of the defendant. (c) That (1) the provisions of the Portal-to-Portal Act of 1947, and each and every provision thereof, do not apply to this action; and (2) that if the Portal-to-Portal Act of 1947, or any provision thereof, applies to this action then said Portal-to-Portal Act is void and unconstitutional for the reason it and each and every provision thereof contravene Articles I, III and VI and Amendments V, IX and X of the Constitution of the United States.

3. That the issue set out in paragraph 2 (a) above, to-wit:

That plaintiffs were not engaged in the production of goods for commerce has been decided heretofore adversely to the contentions of the defendant and is res judicata. That plaintiffs specifically plead res judicata on the issue of commerce.

4. That defendant held itself out as the employer of these plaintiffs and led and induced them to believe and act thereon and is now estopped to deny it was their employer.

5. That defendant represented to its employees, including these plaintiffs, that it was subject to the provisions of the Fair Labor Standards Act and that the employees at the Arkansas Ordnance Plant were entitled to the benefits, rights and provisions of the said act and came within the purview of said act and the defendant is now estopped to deny same.

6. Admits there is no issue of law or fact on (1) commerce, (2) employee relationship of plaintiffs and defendant, and (3) effect of the Portal-to-Portal Act of 1947.

7. That the affidavits of Gerland P. Patten, Willis Townsend, Davis Chis, Wayne W. Owen, William M. Pabbs, John D. Cash, Frederick Sloan and Ada B. Perkins with [fol. 39] their attachments, are attached hereto and made a part hereof. These affidavits and their attachments, together with interrogatories and responses thereto and requests of admissions of fact and the admissions made in

response thereto and all exhibits attached to same together with the record in the case are in support of this response to the motion for summary judgment.

8. Plaintiffs pray that the motion for summary judgment be denied, that the court find and enter an order that the issues of commerce and employee relationship have heretofore been determined adversely to the defendant and that the Fair Labor Act is applicable to the activities of the defendant, and that the plaintiffs were employees of the defendant, and for all proper relief.

WAYNE W. OWEN.

Service of the above pleading acknowledged this 11th day of August, 1947.

OWENS, EHRMAN & McHANEY,

By: John M. Lofton, Jr.

Attorneys for the Defendant.

(Endorsed): Filed in U. S. District Court on August 11, 1947.

[fol. 40] Affidavit of Gerald P. Patten

The affiant states:

That he was familiar with the method of hiring employees and the operations of the Arkansas Ordnance Plant at Jacksonville insofar as the production lines were concerned. When an employee was hired, a written document, called a Report of Hire, was issued. This Report of Hire contains his name, badge number, age, address, Social Security number, rate of pay, date of birth, marital status, classification, job location, whether to be paid by the hour, week or month, if employment is permanent or temporary, when to start and to whom to report. This Report of Hire was signed by an authorized employee of the Personnel Department of Ford, Bacon & Davis and the employee was required to sign same. The employees certificate required acceptance of employment as set out in the form and that he did not advocate and was not a member of any organization that advocated the overthrow of the Government by force.

That each employee was given a manual designated, "Employees Manual," which contained instructions relative to working time and places. The manual provided that the employee must be at his respective place of work and leave same at the scheduled starting and quitting time unless otherwise instructed by his foreman and that "employees will report for work and leave at the time specified by their respective supervisors." Non-supervisory employees were to be paid one and one-half time for all work in excess of 40 hours per week. Also time and one-half for a few designated holidays and double time for the seventh consecutive day. It required all matters of employee relations and welfare to be taken up first with the supervisor then on to higher levels to the general manager.

Affidavit of Willis Townsend

The affiant states:

That he was employed at the Arkansas Ordnance Plant at Jacksonville from May 1, 1942, until June 11, 1945. That he was an investigator under the supervision of the Protection Manager who was Head of the Plant Protection Department. For a time he was the Chief Investigator in his Department and he personally investigated all employees who were employed by Ford, Bacon & Davis, which were some 70,000, making investigations of accidents [fol. 41] on the grounds and all incidents of a questionable nature which might endanger the welfare of the employees.

His department and the personnel therein received their instructions over the signature of the general manager of Ford, Bacon & Davis. The reports of the investigations of employees to be hired and of other incidents were not given to the Ordnance Department of the United States Army unless it involved an automobile owned by the Government or unless it involved a matter of military security.

Many requests for investigations of employees coming from other states were sent to the Retail Credit Company offices and Hooper Holmes Bureau offices all over the United States and these reports were made and returned.

to Jacksonville. A file of fingerprints and police records were received by the investigators of Ford, Bacon & Davis and the fingerprints were sent to the F. B. I. in Washington.

Hospitalization insurance was carried on all employees and was carried by the Prudential Life Insurance Company with Ford, Bacon & Davis, Inc., paying the premiums in its own name.

In August or September of 1943, representatives and investigators of the Wage and Hour Division of the United States Department of Labor made an investigation of the duties of the investigators and fire inspectors and made a decision that said employees should be classified as non-exempt, non-supervisory under the Fair Labor Standards Act and should be paid overtime for all hours over 40 which they worked per week. On October 31, 1943, an order to that effect was issued by the Plant Comptroller and with the consent of the General Manager of Ford, Bacon & Davis, Inc., all investigators were paid for all time over 40 hours per week at the rate of one and one-half times the regular rate. Later the accumulated bank time of these men who had been improperly classified as supervisory was credited to them and paid.

Affidavit of David Cluis

The affiant states:

That he was employed at the Arkansas Ordnance Plant at Jacksonville from January 1, 1943, as an investigator until August 1 of the same year when he was promoted to the office of Industrial Relations Manager in the Personnel Department where he served for a long time. As Industrial Relations Manager he did not receive any orders, instructions or directions from the Government or any department thereof or the Ordnance Department of the United States Army nor did he make any reports to them. All of the instructions and directions concerning the functions and activities of the Industrial Relations Department came from the General Manager of Ford, Bacon & Davis through the Head of the Personnel Department.

The functions and duties of the Industrial Relations Manager was to represent employees of the plant with the management of Ford, Bacon & Davis, Inc., settle grievances, make investigations of grievances, transfer, termination of employees or their reassignment. The Personnel Department had charge of the employment of personnel for the Arkansas Ordnance Plant. Employment was upon receipt of employment requisitions from various department heads. There was no place on the requisitions for approval by the Ordnance Department of the Army and no approval was made. Blanket requisitions were made for certain employees over the signature of the department head needing same and individual requisitions were made for individual employees. Any employees receiving increases or decreases in their pay, a change of status form was made out and on the change of status form, for the benefit of the Accounting and Pay Roll Departments, the letters "S" or "NS" were placed, indicating either supervisory or non-supervisory; also, letters "FL" or "WH," indicating applicability of the Fair Labor Standards Act or Walsh-Haley Act.

Affidavit of Wayne Owen

The affiant stated:

That he was a practicing attorney in Little Rock, member of the firm of Talley, Owen & Talley, and represented many plaintiffs in actions against Ford, Bacon & Davis for overtime worked at the Arkansas Ordnance Plant. They claimed compensation due them under the provisions of the Fair Labor Standards Act and compromises were reached wherein most of the plaintiffs were paid sums claimed by them to be due them under the act.

Affidavit of William M. Dabbs

The affiant stated:

That he lived in Little Rock, was employed by Ford, Bacon & Davis at the Arkansas Ordnance Plant on October 12, 1942, and sent to foreman's school. Upon graduation, he was made apprentice foreman and assigned to one of

the production lines later being promoted to foreman, assistant line superintendent and line superintendent. He was with the plant on one of the production lines until is [fol. 43] closed in 1945. As line superintendent, he had charge of and responsibility of all of the activities of a production line; personnel on the lines varied from 500 to 3,000, depending upon the line and its activity.

The activities were production, inspection and back line activities. On a production line all of the processes and operations necessary to load, assemble or otherwise process munitions were performed. The materials and supplies were received on the line; powder was processed and made ready for use; inert components inspected; materials, powder and supplies assembled in the various operating places on the line, and the component loaded or assembled; the loaded or assembled component was inspected, packaged, packed and transported from the line to the storage area.

On the front line where the components were assembled or loaded, the personnel were required to be at their places of productive activity at 7 o'clock and remain there until 3 p. m., the second shift from 3 p. m. to 11 p. m. and if there was a third shift, from 11 p. m. until 7 a. m. The personnel on the front line were required and were instructed by their supervisors to present themselves at the production line in sufficient time for them to be admitted by the guards to the production area, to clock in, go through the change house and to assemble themselves at a designated place five minutes prior to the beginning of the scheduled working hours, which were 7, 3 or 11. At the conclusion of the scheduled working hours, 3, 11 or 7 o'clock, the personnel left their respective work places under close supervision in semi-military formation and went through the change house, performing certain duties and activities required of them by their employer, clock out and were checked out of the production area gate where they got in buses or private vehicles, crossed the plant area and left the company's premises.

It was necessary for the employees to stand in line for considerable time awaiting their turn to clock out as there were insufficient time clocks; due to the large number of employees and limited facilities, it was necessary for them to

spend considerable time in change houses awaiting their turn to do the things required of them by their employer. Certain of the employees, as set out in the complaint which has been filed, were required to report to their places of work a considerable time prior to their scheduled work hours and to perform certain functions required of them [fol. 44] by their employer and to remain at the scheduled work place for some time after the end of their scheduled work hours to perform activities required of them by their employer.

Where the explosives were received, processed, made ready for use and dispatched to the front line, the employees were required to wear special clothing, take special precautions and report at specified hours prior to the beginning of their scheduled work time. They likewise were required to go through the activities mentioned above.

The employees received pay only for the scheduled work hours, 7 to 3, 3 to 11 and 11 to 7.

At no time were the employees permitted to leave the production area after passing through the gate nor to clock out after going through the clock house except in actual emergency and then only with the permission of their supervisors. From the moment they were admitted to the production area, they were under the immediate and direct supervision and control of Ford, Bacon & Davis, their employer.

At no time did the Government or the Ordnance Department of the United States Army or any member thereof exercise or attempt to exercise jurisdiction over the conduct, behavior and activities of the employees on the line. The manner and method of the performance of the duties assigned to the production lines were under the control of Ford, Bacon & Davis and this control and direction was exercised by the publication of rules and regulations, orders, bulletins and manuals as well as verbal orders given daily.

Affidavit of Frederick E. Sloan

The affiant stated:

That he lived in Little Rock, Arkansas, and was in the employ of Ford, Bacon & Davis at the Arkansas Ordnance

Plant from April 20, 1942, until July 30, 1945. He was a member of the Inspection Department and was promoted in order from inspector, foreman, line inspector and head inspector. He was assigned to one of the lines as head of the Inspection Department to see that the components loaded, assembled or in any way handled on that line conformed to the specifications and requirements. Also to see that the processes and operations established for the processing, loading, assembling and otherwise handling items of ordnance were done and performed in the prescribed method and manner.

[fol. 45] All of the regulations, manuals, procedures and specifications were issued over the signature of the officials of Ford, Bacon & Davis, except the drawings containing the specifications of the ordnance item and these drawings originated and were approved in the Office of the Chief of Ordnance of the United States in Washington, D. C.

At no time did the Ordnance Department of the United States Army or any of its personnel direct, supervise, instruct or attempt to direct, supervise or instruct the activities of the Inspection Department on the production lines. The component being loaded, assembled or otherwise handled on the production lines was inspected and either accepted or rejected by the Inspection Department of Ford, Bacon & Davis and if rejected sent to the burning grounds and destroyed. If the completed component was accepted, it was assembled in case lots and offered to the United States Army as a completed lot of munitions. The Ordnance Department either accepted or rejected the lot as such the same as it would if it had been offered by a private industry such as Chrysler making tanks or Hercules making powder.

The line inspectors were furnished with wage classifications and rates of all employees at the plant. These wage classifications and rates gave the classification number, the classification nomenclature, symbols indicating supervisory, non-supervisory, Fair Labor Standards Act or Walsh-Haley Act and the rate of pay whether by the hour or by the week. The schedule of classifications and rates of pay were not secret information but were to be freely discussed

with employees and we were instructed to so discuss it with any employees seeking information or complaining.

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Affidavit of Ada B. Perkins

Ada B. Perkins stated:

That she was an employee of Ford, Bacon & Davis at the Arkansas Ordnance Plant from the 8th day of August, 1944, until August of 1945, when the plant closed and that she was an operator on a production line. That there was exhibited to her the complaint filed in the District Court of the United States, Eastern District of Arkansas, Western Division, wherein Julia Rhoda Aaron, et al, were plaintiffs and Ford, Bacon & Davis was defendant. That she read same carefully and from her own personal knowledge stated that all allegations of fact contained therein were true. The complaint referred to in this affidavit is the complaint set out in full in the record on this appeal.

[fol. 46]

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Affidavit of John D. Cash

The affiant stated:

That he was in the employ of Ford, Bacon & Davis at the Arkansas Ordnance Plant from January, 1942, until the 10th day of March, 1944, when he entered the Marine Corps, serving therein until October, 1944, when he was released because of his age, returned immediately to the Arkansas Ordnance Plant and resumed his duties and remained there until the plant closed in 1945. That he served in various capacities in the Inspection Department and was made Assistant Chief Inspector of the Inspection Department in October, 1942, and served in that capacity until March, 1944, when he entered the Marine Corps. As such Assistant Chief Inspector he was in charge of the Inspection Department on all production lines at the Arkansas Ordnance Plant on the second shift. It was necessary and he was familiar with all of the specifications, requirements of all of the components loaded, assembled or otherwise handled on the line, the policies of his employer, Ford, Bacon & Davis, schedules, organization of the plant and

functions and responsibilities of the various departments. It was the function and responsibility of the Inspection Department of Ford, Bacon & Davis to inspect all materials that arrived at the plant for use in the loading or assembling of ordnance items, to see that they conformed to specifications, to make inspection of all ordnance items while in the process of being loaded or assembled, and to inspect the item after it was assembled or loaded. The purpose of the inspection was to see that the specifications and requirements, regulations and controlling the assembling, loading or handling of the items were adhered to. At no time did the Ordnance Department or any member thereof or the Federal Government or any department thereof direct or attempt to direct, control or instruct the employees of Ford, Bacon & Davis in the Inspection Department. All of the instructions, regulations, manuals, etc., governing the activities, functions, and responsibilities of the Inspection Department of Ford, Bacon & Davis came from the General Manager of Ford, Bacon & Davis through the Head of the Department.

From 75 to 85 percent of the quantity of ordnance items manufactured, assembled, processed or otherwise handled by the Arkansas Ordnance Plant consisted of detonator, primer and percussion elements. The detonators, primers and percussion elements constituted only an ingredient of some larger component. Alone they were useless and constituted nothing but a hazard. It was necessary that they be loaded into or assembled under some other item before they could be used. In no sense were they finished products ready for use or consumption. These detonators, primers and percussion elements required further processing, handling, loading or assembling before they were ready for consumption or use. These detonators, primers and percussion elements were shipped to other places in other states of the Union for further processing and assembling before they were ready for consumption or use.

Much of the material processed, loaded or assembled at the Arkansas Ordnance Plant had a peacetime use.

Schedules of classifications and wage rates were issued to the different production lines. If any of the employees

in the Inspection Department on the production line were dissatisfied or had complaints they were required to take the matter up with their immediate supervisor and if it could not be disposed of to take it up with me, if it were second shift employee, and if not disposed of by me to then take it up with the department head, etc. There was much complaint long before the plant closed, by employees concerning the long hours they were compelled to be under the control and supervision of their employer and for which they were not paid. I invariably stressed that these complaints must await the termination of the war. That every effort must be devoted to the one job of winning the war. Various meetings were held on the lines from time to time stressing production for patriotic purposes; regular and intensive campaigns were carried on, speeches were made, posters were issued calling attention of employees to the fact that nothing must be permitted to interfere with full production.

Ford, Bacon & Davis did not, in good faith, endeavor to discharge all obligations due employees under their contracts of employment at the Arkansas Ordnance Plant, nor were there any orders, regulations, rules, approvals or interpretations ever issued by the Ordnance Department of the United States Army or any other agency of the Government in which said Ordnance Department or agency claimed or attempted to interpret, administer, and enforce the Fair Labor Standards Act or any of its provisions.

[fol. 48]

Motion to Consolidate

The plaintiffs and interveners in open court August 15, 1947 filed a motion to consolidate, said motion being to adopt the motion to consolidate therefore filed by the defendant, Ford, Bacon & Davis, Inc., and withdrawn by them August 15, 1947. Said motion was based on the contention that the cases presented common questions of law and fact on the issues of [commerce] and employer-employee relationship and to consolidate said causes would facilitate the disposition of said cases and avoid unnecessary costs.

Order to Consolidate

On August 15, 1947, the Court, upon the oral motion of plaintiffs and interveners in the cases listed on the caption of this appeal, consolidated the causes for the purpose of a hearing on the motion for summary judgment. That the cases should be consolidated under the style of Julia Rhoda Aaron et al., plaintiffs, vs. Ford, Bacon & Davis, Inc.; defendants civil action No. LR-1584, consolidated.

[fol. 49] Request for Admissions and Responses Thereto

Filed in U. S. District Court on August 9, 1947.

The defendant, in response to requests of the plaintiff and intervenors, admitted:

That under its contract with the Government it was required to pay its hourly paid employees overtime at the rate of time and one-half for all time worked in excess of 40 hours a week.

That payment on the above basis was promised each employee at the time of his employment. The promise was not a part of the Report of Hire, which was made at the time of employment, but was contained in an employees manual of general information which was given to the employee at the time of his employment.

That the activity of the defendant was investigated several times by the Wage and Hour Division of the Department of Labor. Findings made by the Wage and Hour Division were sometimes furnished the defendant, but not always. The Wage and Hour Division of the Labor Department was evidently of the opinion the employees of the Arkansas Ordnance Plant were covered by the provisions of the Fair Labor Standards Act. But the defendant believes there was no general investigation concerning the question of coverage. The Ordnance Department of the Army, as a practical matter, instructed and approved the payment of all hourly paid employees at one and one-half or two times their regular hourly rate for all hours in excess of 40 hours worked during any one work week. To the request "you at all times led your employees to believe that you were and would pay them in accordance

with the terms of the wage and hour law," the response was made "the defendant denies that it has violated the provisions of the Fair Labor Standards Act."

That the Arkansas Ordnance Plant was operated by defendant, Ford, Bacon & Davis, Inc., under its contract with the Government. Munitions of war were loaded, assembled and processed by the defendant at the said Arkansas Ordnance Plant and shipped by the Government to points outside the State of Arkansas. The type and quantity of munitions loaded, etc., was specified by the Government. The defendant designed parts for and in some instances manufactured parts for the machines used at the plant. Some materials were scrapped and sold as salvage at f. o. b. the plant, Jacksonville, Arkansas, and some of this material, such as copper and brass scrap, was shipped in carload lots to private purchasers outside the State of Arkansas.

[Vol. 50] Filed in U. S. District Court on August 9, 1947.

In response to interrogatories propounded to Ford, Bacon & Davis by the plaintiffs and intervenors herein, the said Ford, Bacon & Davis stated:

- That goods, supplies and materials for use at the Arkansas Ordnance Plant were purchased outside of the State of Arkansas and shipped into the state. The purchases, except in a few instances, were previously approved by the Ordnance Department of the Army. Shipment was made on Government bill of lading and title to the goods was taken by the United States Government at the Arkansas Ordnance Plant at Jacksonville, Arkansas, after they had inspected and found acceptable by a representative of the Government.

That Ford, Bacon & Davis, the defendant and appellee herein, was charged with all the supplies, goods, machinery, equipment and materials used, processed, loaded, assembled and handled at the Arkansas Ordnance Plant at Jacksonville, Arkansas. The title to the above, after their acceptance by the Government at the Arkansas Ordnance Plant, at Jacksonville, Arkansas, was in the Government, but the responsibility was on the operator, Ford, Bacon

& Davis. Upon termination of hostilities, representatives of the Government made an inventory and inspection and finding all the machinery, equipment, goods, supplies and materials either consumed or on hand, relieved the operator, Ford, Bacon & Davis, of further responsibility.

The munitions loaded, assembled, processed and handled at the Arkansas Ordnance Plant at Jacksonville, Arkansas, were shipped outside of the State of Arkansas to other points in this country for further processing, handling or storage or to a port of embarkation for shipment overseas.

Some of the materials, goods and supplies used, processed, etc., at the Arkansas Ordnance Plant were scrapped. The scrap was usually sold locally in the manner provided by regulations of the Ordnance Department of the United States Army. Some of the scrap, at the direction of the Ordnance Department, was shipped outside of the state of Arkansas in carload lots to private concerns purchasing same.

That the operator, Ford, Bacon & Davis, working in cooperation with the Ordnance Department, established wage classifications and rates for all classes of employees at the Arkansas Ordnance Plant. All non-supervisory employees at the Arkansas Ordnance Plant were to be paid time and one-half for all hours in excess of 40 hours during any work week. A copy of the classification and wage rate schedules are filed with the Clerk of the District Court for the Eastern District of Arkansas and reference thereto may be had.

The date, bulletin number and order number of any and all regulations, rules, approval of interpretations of the operation of the Arkansas Ordnance Plant under the Fair Labor Standards Act in which the Ordnance Department of the United States Army attempted to interpret, the manner of the separations as it related to the Fair Labor Standards Act, are as follows: (1) Wage rates and job classifications of employees were approved by the Ordnance Department; (2) All Reports of Hire and change of status of employees were reported on accounting form to the Commanding Officer of the plant and it was necessary for him to approve them in order for the employer

to receive reimbursement; (3) The cards of the employee were checked by civilian employees of the Government, working for the Ordnance Department of the United States Army; (4) Pay rolls were prepared by the contractor and submitted to and audited by the Ordnance Department with a certificate showing such examination; (5) The Wage and Hour Division of the Department of Labor took up with the Ordnance Department any question of coverage of the Fair Labor Standards Act of employees of the Arkansas Ordnance Plant and as appears from one of the letters in the files of Ford, Bacon & Davis, the Ordnance Department submitted to the Wage and Hour Division of the Labor Department its plan of employment of the firemen at the Arkansas Ordnance Plant and the Wage and Hour Division of the Labor Department approved the suggested plan as being in accordance with the provisions of the Fair Labor Standards Act.

[fol. 52] Order For Summary Judgment
 In The United States District Court
 Eastern District of Arkansas
 Western Division

Julia Rhoda Aaron et al., Plaintiffs,
 No. L.R.-1584. v. Civil Action.
 Ford, Bacon & Davis, Inc., Defendant:

On the 12th day of August, 1947, this cause came on to be heard on the motion of the defendant, Ford, Bacon & Davis, Inc., for a summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the plaintiffs being present by their attorneys, Talley & Owen, Wayne W. Owen appearing, and Gerland P. Patten and C. H. Earl; and the defendant being present by its attorneys, Owens, Ehrman & McHaney, E. L. McHaney, Jr., appearing, and John M. Lofton, Jr., and the court, having considered the pleadings in the action, the affidavits in support of the motion filed by the defendant, the affidavits opposing the motion filed by the plaintiffs, the admissions of fact made by the defendant pursuant to the request of the plaintiffs under Rule 36 of the Federal Rules of Civil

Procedure, the responses to interrogatories propounded to the defendant by the plaintiffs, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and the pleadings and orders of the court in the case of *J. L. Mitchell v. Ford, Bacon & Davis, Inc.*, the same being Civil Action No. L.R.-855 in this court, which pleadings and orders are attached as exhibits to the affidavits filed by the plaintiffs in opposition to the motion, and upon the statement of counsel for the defendant that the affidavits in opposition to the motion raised disputed questions of fact in connection with the applicability to this action of the Portal-to-Portal Act of 1947, and upon the statement of counsel for plaintiffs that the affidavits filed by the plaintiffs in opposition to the motion raise no controverted questions of fact, and having heard oral argument, finds that there is no genuine issue as to any material fact and no controversial question of fact to be submitted to the trial court in connection with the first alleged ground for summary judgment set forth in paragraph 1(a) of defendant's motion for summary judgment, to-wit:

"That the plaintiffs were not engaged in commerce or in the production of goods for commerce within the meaning of those terms as used in the Fair Labor Standards Act; and"

The court further finds that the facts in this case concerning the grounds set forth in paragraph 1(a) of the motion for summary judgment are substantially the same as the facts in the case of *Barksdale v. Ford, Bacon & Davis, Inc.*, Civil Action No. L.R.-1323 in this court, and the court adopts the opinion filed by it in said cause No. L.R.-1323 as its reasons for the entry of this judgment in so far as the reasons assigned in said opinion are applicable here, and orders that a copy of said opinion be filed herein and made a part of the record in this case.

And the court having concluded that defendant is entitled to judgment as a matter of law on the ground that plaintiffs were not engaged in commerce or in the production of goods for commerce and that it is not necessary to pass on any other issue raised in said motion for summary judgment, it is hereby Ordered, Adjudged and Decreed.

That plaintiffs take nothing, that the action be and it is hereby dismissed, that defendant have and recover from the plaintiffs its costs in this action, and that defendant have execution therefor.

Dated this 15 day of August, 1947.

HARRY J. LEMLEY,
United States District
Judge.

(Endorsed): Filed in U. S. Court August 15, 1947.

[fol. 54] (Opinion of District Court.)

Filed in Case No. 1584 Cons. by direction of Court, as his opinion in said 1584.

GRADY MILLER, Clerk,

By Eva H. Logan, D. C.

In the District Court of the United States, Eastern District
of Arkansas, Western Division

Guy W. Barksdale, Plaintiff;
No. L.R.-1323. vs. Civil Action
Ford, Bacon & Davis, Inc., Defendant.

February 21, 1947.

Action by Guy W. Barksdale against Ford, Bacon & Davis, Inc., operators of the Arkansas Ordnance Plant under a cost-plus-a-fixed fee contract with the United States Government, for overtime compensation, liquidated damages and attorneys' fees, under the Fair Labor Standards Act.

Judgment for defendant.

Catlett & Henderson, Leon B. Catlett and E. DeMatu Henderson, all of Little Rock, Arkansas, for plaintiff.

Owens, Ehrman & McHaney, E. L. McHaney, Jr., and John M. Lofton, Jr., all of Little Rock, Arkansas, for defendant.

Lemley, District Judge.

This is an action under the Fair Labor Standards Act of 1938, 29 U. S. C. A. Sec. 201 et seq., for overtime com-

pensation, liquidated damages and attorneys' fees, brought against the defendant Ford, Bacon & Davis, Inc., by the plaintiff Guy W. Barksdale and 26 other men who were employed in supervisory capacities in the operation of the Arkansas Ordnance Plant during the late war.¹

[fol. 55] The Arkansas Ordnance Plant, situated near Jacksonville, Arkansas, was one of a large number of similar plants engaged during the war, under a cost-plus-a-fixed-fee contract, in the processing and assembling of ammunition for the United States, all supervised by the Ordnance Division of the War Department, and under the management of various corporations, in the present case the defendant, Ford, Bacon & Davis, Inc.

The plaintiffs² bottomed their action on the ground that they were engaged in the production of goods for commerce, within the meaning of Section 207 of the Act; no contention was made that they were engaged in commerce. The action as to all of them was defended on the ground that they were not covered by the Act; and as to all of them except Barksdale it was further contended that they were employed in bona fide executive or administrative capacities and hence exempt from the provisions of the Act. In the case of Barksdale, the defendant admitted that he was not an administrative employee, nor employed in a bona fide executive capacity since his hours of work of the same nature as that performed by those under him exceeded twenty per cent.

The issue of fact with respect to the contention that all of the plaintiffs except Barksdale were exempt employees was submitted to a jury, the Court reserving its decision on the question of coverage. A verdict was rendered for the defendant, thereby disposing of the case as to all of the plaintiffs except Barksdale. His case has not been submitted to the Court without the intervention of a jury, and the Court, based on the defendant's admission above referred to and evidence which is virtually undisputed, has made and filed herein its findings of fact. The findings [fol. 56] pertinent to this opinion are:

¹The case was originally styled *Jim Bradford, et al. vs. Ford, Bacon & Davis, Inc.*

²The word "plaintiffs" as used in this opinion, also includes interveners.

Findings of Fact

1. . . .

6. The Arkansas Ordnance Plant was an ordnance facility owned by the United States Government. It was constructed during the war for the production of munitions such as detonators, percussion elements, artillery primers, fuzes, boosters, and powder train fuzes, for use by the Government in the prosecution of the war.

7. The United States, by written contract, retained the defendant, Ford, Bacon & Davis, Inc., to recruit labor and other personnel for and to manage the operation of the Ordnance Plant. The defendant was paid a fixed fee for this service, and the Government paid all expenses of operation, including the cost of labor and materials.

8. At all times involved in the complaint, the premises upon which plaintiff was employed, the tools and equipment which he and all others working on the premises were using in their employment, and the property and products with which they dealt in such employment were all the property of and belonged to the United States.

9. The component parts of the detonators, percussion elements, artillery primers, fuzes, boosters, powder train fuzes, and other products with which employees at the plant dealt were shipped to the plant as the property of the United States "for military use," and title to and possession thereof remained in the United States during all times relevant hereto.

10. The finished products of said plant were the property of the United States and were by it shipped under Government bills of lading to military facilities without the State of Arkansas for use by the armed forces of the United States in the war with Germany, Italy, Japan, and other nations. Some shipments went directly overseas, and [fol. 57] others went to military facilities located within the United States.

11. The defendant at no time had title to the finished products of the plant, and at no time had title to any of the component parts of such products, or of the materials, supplies, machinery, equipment, or other property used in connection with the contract, title thereto and possession

thereof being at all times in the United States and subject to its sole control.

12. The Government did not purchase munitions from the defendant.

13. The defendant did not sell munitions to the Government or to any other party:

14. No munitions or other products were manufactured or processed at the Arkansas Ordnance Plant except from materials belonging to the Government, and all such munitions and other products were by the Government used in the prosecution of the war.

15. The United States furnished and shipped to the Arkansas Ordnance Plant approximately 95% of all materials, supplies, machinery, equipment, and other property used in connection with the contract for operation of the Arkansas Ordnance Plant. Title to the remainder of the materials, supplies, machinery, equipment, or other property, which were purchased after approval by the Government through the agency of the defendant, vested in the United States at their points of origin, and they were shipped to the Arkansas Ordnance Plant on Government bills of lading, marked "Government property for military use."

16. A Government Finance Officer in Washington, D. C., paid the freight on such bills of lading.

17. The United States had title to and possession of all materials, supplies, machinery, equipment and other property used in connection with the contract for operation of the Arkansas Ordnance Plant at all times relevant hereto.

[fol. 58] 18. The United States maintained an Accountable Property Officer to be accountable for all property used in connection with the contract between the Government and the defendant.

19. Prior to the time the plant actually began operating the United States advanced to the defendant a large sum of money to defray anticipated operating expenses. As money was withdrawn from this fund it was replenished by the Government. The defendant was not required to use

any of its own money in carrying out its contract with the Government.

20. The Government contracted for electric power, and telephone, telegraph, and teletype service at the plant, and paid such bills directly. The defendant was appointed an agent of the Government for the purpose of causing official business messages to be transmitted.

21. The plant was under the direct control and supervision of the Chief of Ordnance, United States Army. A Commanding Officer appointed by the Chief of Ordnance was on duty at the Arkansas Ordnance Plant at all times relevant hereto, and exercised full and complete control over the property and the installations thereon.

22. The United States had exclusive jurisdiction over the premises embracing the Arkansas Ordnance Plant.

23. The Government retained the right to approve or disapprove the employment of all personnel and exercised this right.

24. The Government approved all wage and salary rates, and all promotions or other changes of status of employees were required to be approved in advance by the Government.

25. All munitions manufactured or processed at the plant were manufactured or processed under the direct supervision and control of the Government.

26. The Government specified the manufacturing processes to be used. It directed the type and quantity of munitions, the specifications thereof, and the rate of production. Inspections were made by the Government during each step of their manufacture or processing. Detailed [fol. 59] rules and regulations governing safety and methods of production were promulgated by the Government. The defendant was required to comply with these rules and regulations, and Government-paid employees were present to report on compliance.

27. The Government, from time to time, sent to the defendant production schedules directing the defendant to [product] munitions of certain designated specifications. The defendant was required to meet these schedules. It

had no discretion as to the type of munitions to be made, the quantity thereof, or the method or process used in their manufacture, and the defendant produced no munitions except as required by Government directive.

28. On occasion the Government transferred production schedules from other ordnance plant to the Arkansas Ordnance Plant for completion. In such cases, if the original plant had made any contracts for materials and supplies on account of such schedules, the defendant was required to take over such supply contracts and to pay the vendors in accordance therewith from Government funds.

29. The defendant was not penalized if the materials manufactured or processed at the plant did not meet specifications and could not be used. Under the contract between the defendant and the Government, the defendant was allowed all costs of reworking rejected munitions and all costs of material finally rejected.

30. Of the direct materials used in the manufacture of munitions, the Government furnished materials of the approximate value of \$275,768,000.00, and the defendant purchased and paid for with Government money materials of the approximate value of \$9,574,602.34.

31. The purchase of materials, supplies, machinery, tools, equipment, or other property acquired through the agency of the defendant was first approved by the Government. The Government took title to such goods at their points of origin, and the goods were shipped on Government bills of lading to the contracting officer in care of the defendant.

32. The Government audited in advance all time cards [fol. 60] and pay rolls, and witnessed the actual payments to employees.

33. The defendant paid wages and salaries of employees by check against a bank account furnished by the Government.

34. No sales tax was paid on materials purchased for use at the Arkansas Ordnance Plant, no property taxes on real or personal property of the Arkansas Ordnance Plant were paid to the State or the county, and no license or

registration fees were paid on motor vehicles used in connection with the operation of the plant.

35. Employees traveling on business connected with the operation of the plant traveled on tax-free transportation tickets and for that purpose were authorized to state that they were on Government business.

Opinion

Based on these findings of fact, the defendant contends that the plaintiff is not within the coverage of the Act because (1) the defendant was merely an agent of the Government in the assembling and processing of said munitions, and hence the plaintiff was at all times an employee of the United States and as such exempt from the provisions of the Act, and (2) because the plaintiff was not engaged "in the production of goods for commerce" within the meaning of the Act, inasmuch as the term "goods" as used in said phrase does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof, other than a producer, manufacturer or processor thereof, and the Government was the ultimate consumer; and because the term "commerce" used in said phrase does not include the shipment across state lines by the Government of Government-owned munitions of war to military facilities, to be used in the prosecution of the war; such transaction not constituting "commerce" but an administrative act of the Government exercised in its sovereign capacity.

The provisions of the Act peculiarly applicable to these contentions are as follows:

[fol. 61] "No employer shall * * * employ any of his employees who is engaged in * * * the production of goods for commerce" without complying with the provisions of the Act. Sec. 207 (a).

"'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States * * *." Sec. 203 (d).

"'Goods' means goods (including ships and marine equipment), ware, products, commodities, merchandise, or

articles or subject of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof." Sec. 203(i).

"'Commerce' means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof." Sec. 203(b).

We will proceed to a discussion of the defendant's second contention, based on the construction of the words "goods" and "commerce" as used in the [phrase] "production of goods for commerce," since the conclusions we have reached in that regard render it unnecessary for us to pass upon [its] first.

Section 3(i) of the Act, 29 U.S.G.A. Sec. 203 (i), provides that the term "goods" as used in the phrase "production of goods for commerce", "does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer or processor thereof." The Arkansas Ordnance Plant was in its entirety the property of the United States. Practically all of the materials that went into the munitions were furnished by the Government and were shipped to the plant as the property of the United States, for military use. This included powder, metal and other materials that formed a part of the munitions. This was known as free issue material. The remaining materials, which were used in the main in the fabrication packing and shipment of the munitions, were purchased by the defendant from outside sources, and all these materials became the property of the Government at the point of purchase, and were shipped from the point of purchase to the "Ordnance Property Officer, care of Ford, Bacon & Davis, Inc., Arkansas Ordnance Plant, Jacksonville, Arkansas." Thus the plaintiff was at all times working on goods of the Government, with machines of the [fol. 62] Government, and on Government property, the title to which and the possession of which remained in the

United States at all times. After these goods were worked on by the plaintiff, the United States shipped the same under Government bill of lading to military facilities outside of the state. If it can be said that the goods were in the constructive rather than actual possession of the Government while they were being processed, they were certainly in the actual physical possession of the Government when they were shipped. The goods in question were munitions of war and were manufactured for the purpose of being consumed by the United States in the prosecution of the war. Hence the United States in our opinion was the ultimate consumer thereof within the meaning of the Act, and the plaintiff was not engaged in the "production of 'goods' for commerce."

This point appears not to have been raised in the cases relied upon by the plaintiff, which will be hereinafter referred to, and there is but little authority thereon.

In *Divins et al. v. Hazeltine Electronics Corporation et al.*, D.C., S.D.N.Y., C.C.H. 11 Labor Cases, Paragraph 63,320, the plaintiffs were employed by the defendant to install on warships, and service, radar equipment which was the property of the United States Navy. The equipment had been previously delivered to the United States and was in the actual possession of the United States at all times, and plaintiff's services were utilized in connection therewith. The case was submitted to the Court on defendants' motion for summary judgment, which motion was sustained on the ground that the plaintiffs were not engaged in the production of goods for commerce because the United States was the ultimate consumer of the equipment upon which the plaintiffs were working. We quote at length from the Court's opinion:

"The controversy here centers principally around the question whether plaintiffs were engaged in the production of goods for interstate commerce. And this turns upon whether the radar equipment, the goods, upon which plaintiffs worked had been delivered to and was at the time in the actual physical possession of the ultimate consumer thereof. There is no claim that the actual physical possessor was a producer, or a manufacturer, or a processor of the equipment.

"Defendants allege in their moving affidavits that the radar equipment had been delivered to the United States prior to the times, and was in the actual physical possession of the United States at the times, that plaintiffs' services were utilized in connection therewith. Plaintiffs do not deny these allegations but describe them as bare conclusions and insufficient upon this motion to show such delivery and possession. However, in their answering affidavits they admit that they were employed by defendants to perform, and did perform, services in installing, servicing and maintaining radar equipment under contracts which defendants had with the United States, or with others who had made similar contracts with the United States, to render such services, and that their services were rendered at various United States naval establishments and upon various types of warships owned by the United States. I think that delivery and possession are sufficiently shown. If the facts be otherwise, plaintiffs should have made some attempt to show it.

"But instead of doing so, they rely upon the arguments that the radar equipment had not been fully completed at the time of its claimed delivery to the United States, for, if it had been completed, there would have been no necessity for plaintiffs to work upon it; that the equipment was useless and incapable of use unless and until it was installed and serviced by plaintiffs; that, so long as defendants' employees were working on the equipment, defendants still had the actual physical possession of it and there could be no delivery; and that the ships in which the equipment was being installed had not themselves been completed.

"All these arguments are specious. There is no requirement in Section 3(4) of the Act that the goods shall have been completed prior to delivery. This Section defines goods as including 'marine equipment, * * * or articles or subjects of commerce of any character, or any part or ingredient thereof.' Though the equipment may have been incapable of use until installed, it was, nevertheless, marine equipment. Many articles, such as gas stoves, electric refrigerators, etc., are completed articles but incapable of use until installed and connected. Plaintiffs do not claim

that the radar equipment was not completed before it was shipped from the plant; all that they claim is that it first had to be installed. The work of installing this equipment must have been a very small part of plaintiff's services, for in their answering affidavits they swear that 'approximately 50% of all my work was to grease and oil moving parts of the equipment * * * and almost all of my remaining work was actually radio servicing.' The argument that, so long as plaintiffs were working on the equipment, defendants still had actual physical possession of it, is a non sequitur. Whether the ships had themselves been completed is of no consequence in this connection."

[fol. 64] "I have no doubt that the radar equipment had been delivered to, and was in the actual physical possession of the United States. Nor have I any doubt that the United States was the ultimate consumer thereof."

"Plaintiffs also claim that they were engaged in commerce, as distinguished from being engaged in the production of goods for commerce, because the ships in which the radar equipment was installed, were 'used in the conduct of the war and were thus engaged in interstate commerce,' and, 'whether in peacetime or in wartime, ships are vital instrumentalities of commerce.' I do not think that this argument is sound. Prosecution of a war is not commerce. War is the negation of commerce. Often the purpose of a war and the result, usually, is to impair or destroy commerce, not to carry it on. True, in the prosecution of the war warships transport men, munitions, food for crew and troops and supplies for civilians. Literally speaking, this is commerce but it is purely incidental to the main purpose for which the warships are being used."

"In my opinion plaintiffs are not within the coverage of the Act because they were not engaged in commerce—and, so far as they were engaged in the production of goods for commerce, the goods upon which they worked were in the actual physical possession of the ultimate consumer which was not a producer, manufacturer, or processor thereof."

"The motion for summary judgment should be granted. Settle order on two days' notice."

Nor do we think that the term "Commerce" as used in said phrase can logically be construed to include a shipment across state lines by the Government to its military facilities of Government-owned munitions of war to be used in the prosecution of the war.

The authorities on this point are in conflict, and it is an open question in the Eighth Circuit. The point was raised and argued in the appellees' brief (which we have seen) in *Smith et al. v. Porter et al.*, 143 F.2d 292, wherein the District Court held that the plaintiffs were exempt employees under the Act, and the plaintiffs appealed. The Circuit Court of Appeals affirmed the District Court's decision on the merits, and made no reference to this question in its opinion.

In the Arkansas State Courts, such Governmental transportation is construed not to be "commerce," but an administrative act of the sovereign.

[fol. 65] In this early case of *Matlock v. Sanderson & Porter*, C.C.H. 7 Labor Cases, Paragraph 61,806, Judge Parham of Jefferson Circuit Court said:

"In addition, this Court is of the opinion that the manufacture of munitions of war by the Government and the transportation thereof by the Government to points where needed, either in the United States or abroad, is not commerce as defined by the Fair Labor Standards Act, but is an administrative act by the sovereign."

The Supreme Court of Arkansas in the late case of *H. B. Deal & Co., Inc. v. Leonard et al.*, Ark. S. W. 2d., decided October 21, 1946, held that employees of a corporation engaged in the construction of the Ozark Ordnance Works, near El Dorado, Arkansas, 'which plant was designed and constructed by the Government for the manufacture of ammonia and ammonium nitrate to be used in the manufacture of munitions of war, and which product was to be shipped by the Government outside of the State) were not engaged in the production of goods for commerce. We quote from the opinion of the Court:

"But appellees insist that, if they were not engaged in commerce, they were engaged in the production of goods for commerce. This argument is based on the fact that the plant was to be used in the manufacture and shipment of ammonium in commerce when completed, which is, in our judgment, a false assumption, since the Government would use the product of the plant for the manufacture of munitions to be used in the prosecution of the war in which we were then engaged, and, while it would cross state lines, the Government is the sum of all the states and of itself knows no state lines in the manufacture and shipment of war material. Moreover, the Act does not purport to apply to the Government. It applies to employers of labor who are engaged in commerce. It says: 'No employer shall . . . employ any of his employees who are engaged in commerce,' etc. Clearly, it has no reference to the Government."

In the recently decided case of *Kennedy et al. v. Silas Mason Co.*, C.C.H. 11 Labor Cases, Paragraph 63,423, November 26, 1946, Judge Dawkins of the United States District Court for the Western District of Louisiana, had under consideration an action brought under the Fair Labor Standards Act by certain plaintiffs against the defendant company, a cost-plus-fixed-fee Government contractor, based upon labor performed by them in the operation of the Louisiana Ordnance Plant. The facts were similar to [fol. 66] those in the instant case. Judge Dawkins held that the plaintiffs were not engaged in the production of goods for commerce. He based his decision on different reasoning from ours, but in the course of his opinion he said:

"Had defendant been engaged in the business of manufacturing munitions of war, either as a general proposition, or under contract by which it agreed to produce and sell to the Government, either at fixed prices or at prices to be set from time to time, the situation would have perhaps been different, and the Fair Labor Standards Act as well as other laws pertaining to labor, prices, material, etc., might have come into play. Overtime and other expenses of the producer or manufacturer from whom the Government purchased would simply have been added to the prices which the Government had to pay, just as was

done when it purchased materials, supplies, etc., for carrying on the war. In this latter situation both the employers and employees who made the goods, although for the Government, were engaged in commerce, within the meaning of the law, where the goods moved from one state to another or overseas. On the other hand, in these cases and all others like them where the Government, instead of going into the market and paying for manufactured or raw materials, chose to furnish its own materials and to have its munitions made and shipped from its own plants, paying all expenses in the form of reimbursements to the contractor, plus a fixed fee for the latter's knowledge and skill in the operation of the plants, although declining to become responsible directly for labor, materials or other obligations of the contractor, it is my view, that the same did not constitute commerce. Of course, the Fair Labor Standards Act and all other laws did apply to purchases from private concerns of raw materials of unfinished parts and supplies from which the shells and munitions were made, before they were delivered to the Government, and in those cases where they had to move from one state to another for delivery to the Government. At the same time the finished shells and munitions made at the plant were the Government's property at all times and were physically delivered to it there before being shipped to the battlefronts."

The late Judge Merrill E. Otis, of the Western District of Missouri, in *Trefz v. Foley Bros., Inc.*, C.C.H. 7 Labor Cases, Paragraph 61,743, made the following observation:

"I doubt if the Supreme Court of the United States will ever say that the production of goods for the use of the United States even although they are transported by the United States from one state to another, is a production of goods for interstate commerce. I doubt that very much, but it is unnecessary to pass upon that question in this case."

The Circuit Court of Appeals for the Ninth Circuit has held that the shipment by the Government across state lines of Government owned gold and silver is an administrative act of the sovereign and is not interstate commerce.

[Vol. 67] In *National Labor Relations Board v. Idaho-Maryland Mines Corporation*, 9 Cir., 98 F 2d 129, the facts were that the respondent was engaged in mining gold and silver in California, which minerals were sold and delivered to the Government at its mint at San Francisco in that state. Thereafter the Government shipped the product to its Denver, Colorado, mint. The question at issue was the applicability of the National Labor Relations Act, 29 U. S. C. A. Sec. 151 et seq., to the mining company's operations. The Act applies to the activities of employers which have the intent or necessary effect of burdening or obstructing commerce by: "(a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce." 29 U. S. C. A. Sec. 151. The Court held under the foregoing facts that the respondent was not engaged in such an activity since the transportation in question was not "commerce" but an administrative act of the Government. In the course of its opinion the Court said:

"Nor is the Board's assumption of jurisdiction warranted by the fact that the United States, after purchasing respondent's product and commingling it with other gold and silver, ships the commingled product from its San Francisco mint to its Denver mint for safe keeping. Respondent does not make these shipments or cause them to be made. We regard such shipments, not as commercial transaction, but as administrative acts of Government. If, however, such acts may be said to constitute commerce, it is a commerce to which respondent's activities are not closely, intimately or substantially related, and which respondent's labor practices do not directly or substantially affect."

It has been contended, as will be hereinafter noted, that the foregoing statement: "we regard such shipments,

not as commercial transactions, but as administrative acts [fol. 68] of Government," is dictum, because the Court thereafter stated: "If, however, such acts may be said to constitute commerce, it is a commerce to which respondent's activities are not closely, intimately or substantially related; and which respondent's labor practices do not directly or substantially affect." The Ninth Circuit Court of Appeals, however, evidently does not so regard it, as evidenced by its reference thereto in the later decided cases of *National Labor Relations Board v. Sunshine Mining Co.*, 110 F. 2d 780, and *Fox et al. v. Summit King Mines, Limited*, 143 F. 2d 926. In the *Sunshine Mining Company* case, *supra*, it reiterated its language used in the *Idaho-Maryland* case to the effect that it regarded such shipments, not as commercial transactions, but as administrative acts of Government, but distinguished that case from the one under consideration, using the following language:

"It is asserted that the situation in this case is exactly the same as in *National Labor Relations Board vs. Idaho-Maryland Mines Corp.*, 9 Cir., 98 F.2d 129, 131. Without going into detail we deem it sufficient to say that the facts in that case are different from those found here. There the California mining concern sold its output to the United States in California, and the court in that case did not consider those transactions as commerce at all, but in relation thereto said: 'We regard such shipments, not as commercial transactions, but as administrative acts of Government.'"

And in *Fox et al. vs. Summit King Mines, Limited*, *supra*, wherein the Court was considering an action involving the applicability of the Fair Labor Standards Act to the Company's employees, and where it appeared that the mining company produced gold and silver in Nevada which it sent to the mint in San Francisco, California, by mail, the title to the product remaining in the company until delivery, the Court held the Fair Labor Standards Act to be applicable, and distinguished the *Idaho-Maryland* case on the facts, using the following language:

[fol. 69]. "Appellee cites the case of *National Labor Relations Board vs. Idaho-Maryland Mining Corporation*, 9

Cir., 98 F.2d 129, in which a contrary conclusion was reached by this court. That case has no bearing upon the case at bar because the facts in the former case were different. The Idaho Maryland Mine was located in California; the product was produced in California and was sold to a government mint located in California. Thus, the product produced by the mine did not cross state lines at any time before it reached the mint when it became the property of the United States Government. We did hold in the above case that the subsequent shipment of the gold and silver by the mint to Denver for safe-keeping was an administrative act of the Government and not such a commercial transaction as would render the respondent's activities subject to the National Labor Relations Act, but those shipments across State lines were made after the gold and silver became the property of the Government, while in the case at bar the interstate shipment occurred while the product was still the property of the mine and before it reached the mint."

This principle has likewise been recognized by the Circuit Court of Appeals of the Fourth Circuit. This conclusion is justified by an analysis of the opinion of the District Court in *Holland, Administrator, vs. Haile Gold Mines, Inc.*, 44 F. Supp. 641; and of the Circuit Court of Appeals in *Walling, Administrator, vs. Haile Gold Mines Inc.*, 136 F. 2d 102. The case last cited involved an appeal from the decision in the former.

In the District Court the plaintiff, as Administrator of the Wage & Hour Division of the Department of Labor, sought to enjoin the mining corporation from violation of certain provisions of the Fair Labor Standards Act. It appeared that the mining corporation operated a gold mine near the city of Kershaw, South Carolina, whose employees were engaged in the digging and crushing of rock from which gold was later extracted; that after the gold was obtained it was delivered to the United States Post Office at Kershaw, South Carolina, and from thence forwarded to the United States Mint at Philadelphia, Pennsylvania, in pursuance of orders of the United States Government. After delivery, the United States Treasury issued a check to the company for the bullion. The District Court denied the injunction on the [ground] that, since the shipment of

the gold from the Post Office in Kershaw, South Carolina, to the mint in Philadelphia, Pennsylvania, was made pursuant to orders of the United States Government, such constituted an administrative act of the Government rather [fol. 70] than a shipment in commerce. Upon appeal of the Administrator, the Circuit Court of Appeals reversed the District Court upon the merits, stating:

“ * * * the Post Office in transporting the gold to the United States Mint in Philadelphia, was not the agent of the Mint, and the gold did not become the property of the Government until it has arrived at the Mint in Philadelphia, was duly receipted for, inspected and paid for by United States Treasury check. We therefore feel that the business conducted by Haile constituted interstate commerce within the Act and was not a mere administrative act of the Government.”

The Court did not expressly so state, but the clear inference is that has the fact been that the Government owned the gold at the time the shipment was made from South Carolina to Philadelphia, such shipment would have been held to be an administrative act of the Government, and not one in interstate commerce.

A similar situation is presented in *Ritch et al. vs. Puget Sound Bridge & Dredging Co., Inc., et al.*, 9 Cir., 156 F. 2d 334, read in connection with *Ritch et al. vs. Puget Sound Bridge & Dredging Co., Inc., et al.*, D. C., W. D. Wash., 60 F. Supp. 670, and a like inference may be drawn.

As heretofore stated, the authorities are in conflict on the question as to whether or not the transportation across state lines by the United States to its military facilities of Government-owned munitions of war to be used in the prosecution of the war, is commerce, or, on the other hand, is an administrative act of the Government. Such transportation was held to be commerce and not an administrative act in *Timberlake et al. vs. Day & Zimmerman, Inc.*, D. C., S. D. Iowa, 49 F. Supp. 28; *Umthun vs. Day & Zimmerman, Inc.*, S. Ct. Iowa, . . . Ia. . . ., 16 N. W. 2d 258; and *Bell et al. vs. Seton Porter et al.*, 7 Cir., . . . F. 2d . . ., Dec. 10, 1946.

In the *Timberlake* case, the District Court treated the question as one of first impression, and cited no definite

[fol. 71] authority to sustain its position. It referred to National Labor Relations Board vs. Idaho-Maryland Mines Corporation, supra; and National Labor Relations Board vs. Sunshine Mining Co., supra, but stated that neither of these cases had "squarely" decided that such shipments were not commercial transactions but administrative acts of Government, and it regarded as dictum the holding to this effect in National Labor Relations Board vs. Idaho-Maryland Mines Corporation, supra.

In *Unithun vs. Day & Zimmerman, Inc.*, supra, the Supreme Court of Iowa cited *Timberlake et al. vs. Day & Zimmerman, Inc.*, supra, and also *Clyde et al. vs. Broderick et al.*, 10 Cir., 144 F. 2d 348, wherein the Court in the course of its opinion said: "There is nothing in the Fair Labor Standards Act which indicates an intent or purpose to exempt from its coverage employees who activities relate to the movement in interstate commerce of personally owned goods of an employer or goods moving interstate for the convenience of the United States Government. The Act creates no such exemptions and we cannot."

In the Clyde case, the plaintiffs were employees of Broderick and Gordon, contractors engaged in the construction of an ammunition plant at Salt Lake City, Utah, pursuant to a contract with the United States Government and the Remington Arms Company. During the construction period, equipment, tools, and other supplies, either owned by the defendants or rented or purchased by them for use on the project, were transported on their order from points outside into the State of Utah, and after use on the plant were boxed, crated and shipped to points outside of the state. The lower court dismissed the action on the ground that the employees were not engaged in commerce or in the production of goods for commerce. The Circuit Court of Appeals reversed the case, and in doing so used the foregoing language cited by the Supreme Court of Iowa. The action in no sense involved a shipment by the Government in its sovereign capacity of Government property across state [fol. 72] lines. There is quite a difference between such a shipment and a shipment made "for the convenience of the Government." All of the shipments in the mining cases heretofore cited by us were made "for the convenience of the Government."

The Iowa Court laid stress on the statutory definition of "commerce" found in Section 203 (b) of the Fair Labor Standards Act, which has been hereinbefore set out, and pointed to the fact that it included "transportation * * * from any state to any place outside thereof," and reached the conclusion that this language included the shipment by the Government across state lines of Government-owned bombs. There is nothing particularly new in this definition of commerce. The National Labor Relations Act, upon which the suits in *National Labor Relations Board vs. Idaho-Maryland Mining Corporation*, *supra*, and *National Labor Relations Board vs. Sunshine Mining Co.*, *supra*, were based, defines commerce as follows: "The term 'commerce' means trade, * * * commerce, transportation, * * * among the several states or between * * * any foreign country and any state * * *"; and the word "transportation" has been repeatedly used in definitions of commerce laid down by the Supreme Court of the United States without in any sense conveying the impression that it meant transportation by the United States of its own property across statelines. For example: in *Carter vs. Carter Coal Co., et al.*, 298 U. S. 238, 298, S. Ct.,, L. ed.,, "As used in the Constitution, the word 'commerce' * * * includes Transportation, * * * of commodities between the citizens of the different states."; and in *Addyston Pipe & Steel Co. vs. U. S.*, 175 U. S. 211, 241, S. Ct.,, L. Ed.,, "As has frequently been said, interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes * * * the transportation of persons and property * * *."³

[fol. 73] The Iowa Supreme Court also cited *Walling vs. Patton-Tully Transportation Co.*, 6 Cir., 134 F. 2d 945. In this case the defendant, a cost-plus-a-fixed-fee Government contractor, was engaged in dike and revetment construction on the Missouri and Mississippi Rivers, and the Court held that inasmuch as this work was done on an instrumentality of commerce, the defendant and its employees were engaged in commerce. The case in our opinion is not in point with the issue under discussion.

³Emphasis on the word "transportation" wherever used in this paragraph has been supplied.

In *Bell et al. vs. Seten Porter et al.*, *supra*, the Seventh Circuit Court of Appeals had under consideration an appeal from a District Court which had held that the eight hours sleeping time of firemen employed by the defendant (a Cost-plus-a-fixed fee Government contractor engaged in manufacturing munitions of war in the operation of the Elwood Ordnance Plant at Elwood, Illinois), was compensable working time under the Fair Labor Standards Act. The Court reversed the decision of the District Judge, with instructions to dismiss the complaint, on the ground that the sleeping time in question was not compensable as a matter of law. The Court went further and concluded that the plaintiffs were engaged in the production of goods for commerce, inasmuch as the Government-owned munitions upon which they were working were thereafter transported by the Government across state lines, citing *Unthun vs. Day & Zimmerman, Inc.*, *supra*, and *Timberlake et al. vs. Day & Zimmerman, Inc.*, *supra*, and *Clyde et al. vs. Broderick et al.*, *supra*, all of which decisions have been discussed herein. No reference was made to the decision of the Supreme Court of Arkansas in *H. B. Deal & Co., Inc. vs. Leonard et al.*, *supra*, or to any of the gold and silver mining cases hereinbefore discussed, or to any of the District Court opinions, to which we have referred as authority for our holding. The Court referred to the statutory definition of "commerce," and in construing that term so as to cover the shipment involved, cited *Atlantic [fol. 74] Co. vs. Walling*, 5 Cir., 131 F. 2d 518, wherein the Fifth Circuit Court of Appeals held that where the definition of "commerce" in the National Labor Relations Act included the restatement of that word along with the statement of other indices of commercial intercourse, Congress intended to enlarge the meaning of the word to include such transactions as *had theretofore been known and acknowledged as constituting commerce* in the constitutional sense. (Italics supplied.) There have been no cases cited to us, and we have found none, which were decided by any court prior to the enactment of the Fair Labor Standards Act, and which tended in any sense to hold that a shipment by the United States in its sovereign capacity of its own property across state lines, constitutes commerce.

With due respect to the courts holding to the contrary, we cannot agree that the shipment involved here is anything other than an administrative act of the Government.

Since the defendant, Ford, Bacon & Davis, Inc., in processing and assembling munitions of war for the Government at the Arkansas Ordnance Plant, was not engaged in the production of goods for commerce within the meaning of the Fair Labor Standards Act, it follows that the plaintiff working under it was not so engaged, and is therefore not within the coverage of the Act, and that his complaint should be dismissed.

HARRY J. LEMLEY,
United States District Judge.

[fol. 75] Notice of Appeal to the Circuit Court of Appeals
In the United States District Court, Eastern District of
Arkansas, Western Division.

Julia Rhoda Aaron, et al., Civil Action No. L. R. 1584;
Monnie Adams, et al., Civil Action No. L. R. 1578;
Mary B. Alexander, et al., Civil Action No. L. R.
1545; Carroll Arrington, et al., Civil Action No. L.
R. 1492; Willie K. Hobbs, et al., Civil Action No.
L. R. 1469; Dan P. Moore, et al., Civil Action No. L.
R. 1244; and H. J. Story, et al., Civil Action No.
L. R. 1382; Plaintiffs vs. Ford, Bacon & Davis, Inc.,
Defendant, Consolidated and now known as

Julia Rhoda Aaron, et al., Plaintiffs,
No. L. R. 1584 vs. Civil Action Consolidated
Ford, Bacon & Davis, Incorporated, Defendant.

Notice is hereby given that Julia Rhoda Aaron and all other plaintiffs and interveners listed in the complaints and interventions in the District Court and their names appearing of record in the cases in said Court in the above captioned causes filed in the United States District Court for the Eastern District of Arkansas now pending in said court hereby appeal to the Circuit Court of Appeals for the Eighth Circuit from the order granting the defendant a summary judgment made and entered in the said United States District Court in the above captioned actions on the 15th day of August, 1947.

Plaintiffs and interveners whose actions were dismissed by the said order of summary judgment number approximately eighteen hundred (1800), and the naming of each in this notice of appeal, because of the numerous persons, is hereby done by reference to the complaints and interventions filed in the above captioned actions in the said United States District Court for the Eastern District of Arkansas.

**TALLEY & OWEN and
GERLAND P. PATTEN,**
Attorneys for Plaintiffs.

By Gerland P. Patten:

[fol. 76] The within and foregoing Notice of Appeal was duly served upon the defendant by mailing a true copy thereof to its attorneys of record, Messrs. Owens, Ehrman & McHaney, Pyramid Building, Little Rock, Arkansas, on this the 10 day of September, 1947.

**TALLEY & OWEN,
GERLAND P. PATTEN,**
Attorneys for Plaintiffs.

By Gerland P. Patten,
Pyramid Building,
Little Rock, Arkansas.

(Endorsed): Filed in U. S. District Court on September 10, 1947:

[fol. 77] Bond for Costs on Appeal

Know All Men By These Presents:

That we, Julia Rhoda Aaron, et al., plaintiffs in the cases consolidated herein and being numbered 1584, as principal, and Maryland Casualty Company, as surety, are held and firmly bound unto Ford, Bacon & Davis, Inc., in the full and just sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, to be paid to the said Ford, Bacon & Davis, Inc., its successors and assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns jointly and severally by these presents.

Whereas, on August 15, 1947, in an action depending in the United States District Court for the Eastern District

of Arkansas between Julia Rhoda Aaron, et al., as plaintiffs and Ford Bacon & Davis, Inc., as defendant, a judgment was rendered against the said Julia Rhoda Aaron, et al., consolidated, and the said Julia Rhoda Aaron, et al., in said consolidated case having filed a notice of appeal from such judgment to the United States Circuit Court of Appeals for the Eighth Circuit:

Now, the condition of this obligation is such, that if the said Julia Rhoda Aaron, et al., in said consolidated case No. 1584 shall prosecute their appeal to effect and shall pay costs if the appeal is dismissed or the judgment affirmed, or such costs as the said Circuit Court of Appeals may award against the said Julia Rhoda Aaron, et al., if the [fol. 78] judgment is modified or in any other event, then this obligation to be void; otherwise to remain in full force and effect.

JULIA RHODA AARON,

et al., Principal.

By: Talley & Owen and
Gerland P. Patten.

By Gerland P. Patten,
Their Attorneys.

MARYLAND CASUALTY CO.,
Surety.

By Frank C. Mebane,
Attorney in Fact.

(Endorsed): Filed in U. S. District Court on September 10, 1947.

[fol. 79] Statement of Points

The appellants will rely upon the following points:

1. Appellants were employees of appellee, not of the United States.
2. In the performance of the contract between appellee and the United States, appellee was an independent contractor.
3. Appellants were engaged in the production of goods for commerce within the meaning of the Fair Labor Standards Act.

4. The fact that munitions of war were manufactured at the Arkansas Ordnance Plant does not exempt appellee from liability under the Fair Labor Standards Act.

5. The Fair Labor Standards Act does not grant immunity to appellee on the theory that the United States was the ultimate consumer of the manufactured products of the Arkansas Ordnance Plant.

GERLAND P. PATTEN,
Attorney for Plaintiffs and
Interveners.

(Endorsed): Filed in U. S. District Court on October 30, 1947.

[fol. 89] (Order Extending time to File Transcript on Appeal.)

The motion of the plaintiffs and interveners in the above captioned causes for additional time in which to file their record on appeal and docket their action coming on to be heard and the court being well and sufficiently advised as to the law and facts doth find that said motion should be granted.

It is, therefore, considered and ordered that the plaintiffs and interveners in the above captioned causes be and they are hereby given thirty (30) days additional time from the 18th day of October, 1947, in which to file their record on appeal and docket their action in the United States Circuit Court of Appeals for the 8th Circuit.

HARRY J. LEMLEY,
U. S. District Judge.

Date: October 14, 1947.

Approved:

E. L. McHancey, Jr.,
Attorneys for Defendants.

G. P. Patten,
Attorney for pts.

(Endorsed): Filed in U. S. District Court on October 16, 1947.

[fol. 81] (Clerk's Certificate to Abstract of Record.)

I, Grady Miller, Clerk of the District Court of the United States for the Eastern District of Arkansas, in the 8th Circuit, do hereby certify that the foregoing writing annexed to the certificate are true, correct and compared copies of the original remaining of record in my office, at Little Rock, Arkansas, and that the said copies constitute a complete transcript of record on appeal in the case Julia Rhoda Aaron, et al., Consolidated case No. L. R. 1584, vs. Ford, Bacon & Davis, Inc. as per the agreed statement.

In Witness whereof, etc.

(Sgd) GRADY MILLER,
Clerk.

By Eva H. Logan,
Deputy Clerk.

Abstract of Record filed Nov. 22, 1947, E. E. Koch,
Clerk.

SUPPLEMENTAL RECORD OF APPELLEE.

United States Circuit Court of Appeals
EIGHTH CIRCUIT

No. 13,660

CIVIL.

JULIA RHODA AARON AND ALL OTHER PLAINTIFFS AND INTERVENERS LISTED IN THE COMPLAINTS AND INTERVENTIONS IN THE DISTRICT COURT IN CIVIL ACTION NO. L. R. 1584 CONSOLIDATED, APPELLANTS,

vs.

FORD, BACON & DAVIS, INCORPORATED,
APPELLEE.

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF ARKANSAS.**

United States Circuit Court of Appeals

EIGHTH CIRCUIT

No. 13,660

CIVIL

JULIA RHODA AARON AND ALL OTHER PLAINTIFFS AND INTERVENERS LISTED IN THE COMPLAINTS AND INTERVENTIONS IN THE DISTRICT COURT IN CIVIL ACTION NO. L. R. 1584 CONSOLIDATED, APPELLANTS,

vs.

FORD, BACON & DAVIS, INCORPORATED;
APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF ARKANSAS.

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[fol. 16] (Motion of Defendant for Summary Judgment)

(Filed in U. S. District Court on July 22, 1947)

Comes the defendant, Ford, Bacon & Davis, Inc., and moves the court as follows:

1. That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in defendant's favor dismissing this action on the following grounds:

(a) That the plaintiffs were not engaged in commerce or in the production of goods for commerce within the meaning of those terms as used in the Fair Labor Standards Act; and

(b) That the plaintiffs were employees of the United States and as such were not covered by the Fair Labor Standards Act; and

(c) That, by virtue of the provisions of the Portal-to-Portal Act of 1947, the plaintiffs may not recover herein:

2. Defendant states that there is no genuine issue as to any material fact relating to either of the grounds for summary judgment mentioned in paragraph 1 above, and that the defendant is entitled to a judgment as a matter of law.

3. This motion is based upon the affidavits of Ellis Brown, W. F. Whittle, A. R. Clarke, and Clifford Shaw, attached hereto, marked "Exhibit 'A'", "Exhibit 'B'", and "Exhibit 'C'" and "Exhibit 'D'", respectively, and made a part hereof.

OWENS, EHRMAN & McHANEY

By E. L. McHaney, Jr.,
Attorneys for Defendant.
923 Pyramid Building,
Little Rock, Arkansas.

[fol. 17]

Exhibit "A"

(Affidavit of Ellis Brown)

State of Arkansas,

County of Pulaski.—ss.:

The affiant, Ellis Brown, being first duly sworn, deposes and states:

My name is Ellis Brown, and I reside at Skyline Drive, Park Hill, North Little Rock, Arkansas. I am an auditor, and at the present time am employed by the Lion Oil Refining Company.

I was a civilian employee of the War Department at the Arkansas Ordnance Plant during the period the plant was in operation. I started out as principal accounting clerk. Then in 1943 I became an assistant field auditor, and in 1944 I became field auditor. When I started out my duties included the checking of the contractor's records manually from a financial standpoint to verify expenditures made by the contractor. I also verified their purchases. If the records were found to be correct, it was my duty to O. K. purchases for payment.

The procedure for the purchase of materials by Ford, Bacon & Davis was as follows: First, requests for bids were sent out to various vendors. When bids were received a purchase order was prepared and delivered to a Government representative for approval. After approval by a representative of the Government or of the War Department purchase orders were issued to the vendors. When the material was delivered to the plant it was inspected and checked by the contractor and by representatives of the Government. If everything was found in proper order the contractor was authorized to issue checks in payment. The bank account upon which these checks were drawn was furnished by the Government for this purpose. Ford, Bacon & Davis was not required to use its own funds in making these purchases.

[fol. 18] A substantial portion of the materials purchased by Ford, Bacon & Davis was purchased outside the State of Arkansas and shipped to the plant. The material that was

processed at the plant was shipped to various military facilities inside and outside the State. This processed material was munitions of war, and, so far as the Arkansas Ordnance Plant was concerned, was a finished product. Some of this material that was shipped to other ordnance facilities was incorporated into other munitions. The material that was shipped away from the plant was loaded for shipment by persons on the payroll of Ford, Bacon & Davis. This loading was supervised by representatives of the Government.

The material shipped from the plant was shipped by the Government on Government Bills of Lading at reduced freight rates allowed for shipment of Government property. No transportation tax was paid on such shipments. Ford, Bacon & Davis, on behalf of the United States, was manufacturing fuses, detonators, primers, and numerous small items which later probably went into other items, but, so far as the Arkansas Ordnance Plant was concerned, our schedules called for the manufacture of these items only. The detonators and other items were used to discharge or explode various munitions and powders. Many of them were shipped directly overseas as completed items and were not attached to an explosive or bomb until ready for use. A great deal of it went directly overseas in this manner. It could be used in connection with innumerable types of explosives.

The Government set up several distinct funds to pay for various activities at the Arkansas Ordnance Plant. We would receive what we called an "allotment" from Washington, setting forth earmarked funds to finance various phases of the work at the plant. Some funds were general and others were earmarked for specific activities. These funds were officially known as "Procurement Authorities," and were set up in Washington to cover the operation of the Arkansas Ordnance Plant. For example, the Government originally set up a fund for the specific purpose of [fol. 19] purchasing equipment for the Arkansas Ordnance Plant in the sum of \$3,495,000.00. When Ford, Bacon & Davis would purchase equipment the checks were paid from this fund that had been set up by the Government.

4
The fund was replenished from time to time on a revolving basis so that a constant fund was available.

The component parts for the products manufactured at the Arkansas Ordnance Plant were furnished by the Government. The Government would set up schedules for production and would forward the necessary material to the plant without request by Ford, Bacon & Davis. These schedules were set up in Washington by the Ordnance Department and were distributed to the various plants under their jurisdiction. These schedules were not submitted to Ford, Bacon & Davis for either approval or rejection. Production schedules were accompanied by bills of materials which informed us what materials would be furnished by the Government direct, and what materials should be procured by us for the Government. The materials furnished by the Government were called "free issue materials" and were forwarded to the plant automatically.

"Free issue material" was paid for directly by the Government. The defendant, Ford, Bacon & Davis, had nothing whatever to do with its procurement. A substantial portion of the equipment at the plant was furnished by the Government as "free issue material". The material purchased through the facilities of Ford, Bacon & Davis was shipped to the Ordnance Property Officer, who was an Army officer. A great deal of this property was shipped to the plant on Government bills of lading, the freight bills being paid by the Government direct to the carrier.

In order to take advantage of savings through land grant rates, instructions were issued to the Ordnance Department to take title to all property procured by the contractor at the point of origin—that is, the vendor's plant. If the property was shipped to the plant on a commercial bill of lading, it was converted to Government bills of lading, unless the savings in freight involved did not justify the extra work. In order to ship on Government bills of lading and take advantage of lower rates we had to show that the material was military property of the United States from its point of origin to the Arkansas Ordnance Plant.

[Vol. 20] The Ordnance Department had to approve all expenditures before payment was made.

The Ordnance Department issued what is known as the "Ordnance Safety Manual", and the contractor, Ford, Bacon & Davis, Inc., was required by the Government to comply with the directors contained in the manual. The regulations in the safety manual were established for military establishments of the United States Army.

The defendant, Ford, Bacon & Davis, did not pay State sales tax on purchases made in Arkansas. An agreement between the Government and the State of Arkansas eliminated the necessity of paying such taxes.

The contractor made communications by telephone and teletype tax-free at Government rates. The Signal Corps of the United States Army made arrangements with the telephone company for this service. Telegraph service was handled differently at different times. In the beginning all such communications were at Government rates. Some time later it was changed by directive, and commercial rates were paid.

The following letter contained our instructions with reference to telegraph and telephone charges:

War Department
Office of the Chief of Ordnance
Washington

Attention of
SPOGL

August 25, 1942

Ordnance Fiscal Circular
No. 70, Change No. 2

Subject: Telegraph and Telephone Charges in Connection
with Cost-Plus-a-Fixed-Fee Contracts

To: All contracting and Purchasing Officers,
Ordnance Department

1. Instructions contained in paragraphs 2 through 7 inclusive of Ordnance Fiscal Circular No. 70, dated July 11, 1942, are equally applicable to telegrams, cables and radio messages sent in connection with the performance of cost-plus-a-fixed-fee subcontracts executed under Ordnance Department cost-plus-a-fixed-fee prime contracts. The procedure outlined therein will be followed in the pay.

ment by the Government of charges for telegrams, cables, and radio messages sent in connection with the performance of such cost-plus-a-fixed-fee subcontracts. Monthly invoices, after certification by the subcontractor, will be forwarded for payment through the contracting officer or his representative.

[fol. 21] 2. Instructions contained in paragraphs 9 through 12 inclusive of Ordnance Fiscal Circular No. 70, are not intended to apply to payment for telephone service at New Ordnance Facilities where bills are rendered pursuant to contracts between the Signal Corps and telephone companies, since no question of tax exemption is involved. It is intended that telephone bills will be paid by the contractor, with reimbursement by the Government, only where the bills are rendered under contracts between contractors and telephone companies.

3. Cost-plus-a-fixed-fee contracts should contain appropriate provisions in accordance with the principles stated in paragraph 2 above. Contracts providing for the operation of New Ordnance Facilities where contracts for telephone service will be entered into between the Signal Corps and telephone companies should contain the following provision:

The Government will pay direct for all telegrams, telephone communications (including teletype and facsimile when authorized by the contracting officer to be installed), cablegrams, radiograms, and similar messages that may be sent by the contractor pertaining directly to the contract for work to be done or materials to be furnished thereunder, and the contractor is hereby designated as an agent of the Government for the purpose of causing to be transmitted any such messages.

Cost-plus-a-fixed-fee contracts which will be performed in the contractor's plant, the telephone service to be rendered under a contract between the contractor and the telephone company, will include the provisions set forth in paragraph 8 of Ordnance Fiscal Circular No. 70 (substantially same as above except that words 'telephone communications' are omitted from second line); this type of contract should con-

tain a specific provision for reimbursement by the Government for telephone charges paid by the contractor.

By order of the Chief of Ordnance:

IRVING A. DUFFY,

Colonel, J. A. G. D.

Assistant

42-12366"

I was also employed by the Ordnance Department during the period when the Arkansas Ordnance Plant was under construction. During this time the Government, at its own expense and without any charge to the contractor, sent many of the key personnel who were to operate the plant to the Picatinny Arsenal and other Government-owned arsenals for training. Other personnel were sent to the Hercules Powder Company under contract for training.

[fol. 22] The Government contracted with the Arkansas Power & Light Company for the furnishing of electric power to the Arkansas Ordnance Plant. Ford, Bacon & Davis had nothing to do with this.

During the period of operations, in many instances, the Government transferred schedules for production from other plants to the Arkansas Ordnance Plant for completion. For instance, we would take over schedules from Picatinny Arsenal because they were not equipped to get into real mass production. At the time the transfer was made from Picatinny to the Arkansas Ordnance Plant there might have been a number of uncompleted contracts for the purchase of material necessary for the manufacture of the particular item in question. ~~These uncompleted contracts of purchase were automatically transferred to us, although we had nothing to do with entering into them. We were required to buy up the unfinished portion of that contract and pay the bill. The contractor, Ford, Bacon & Davis, Inc., had no choice in the matter, but was required to accept and finish the schedule.~~

The component parts of the products manufactured at the plant were furnished by the Government. For example, in detonators some of the component parts are the cups, paper disks, aluminum disks, and powder. Ford, Bacon &

Davis put these parts together according to specifications furnished by the Government. The Government furnished enough materials for the required work. The employees doing the work were paid on Ford, Bacon & Davis checks. Free issue material is material furnished by the Government without any money charge for it.

A Government bill of lading must go to Washington to a Finance Officer in order for the railroad to receive its money, as the Finance Officer in Washington is the only man who has a schedule of the rates to apply to Government bills of lading. When it became more costly for the Government to issue Government bills of lading than at commercial rates, then we paid commercial rates. Most of the material coming into the plant and leaving the plant traveled on Government bills of lading. The portion paid for at commercial rates was fairly minor.

[fol. 23] The Government made the contract for power with the Arkansas Power & Light Company, and the Government paid the bills.

If property was shipped into the plant to the Commanding Officer for the account of Ford, Bacon & Davis and was rejected it would be returned to the vendor.

In the beginning, the Government set up an advance revolving fund for Ford, Bacon & Davis. Ford, Bacon & Davis would make purchases which were supervised by the Government. The material would come in and be inspected and a receiving report would be issued. Invoices would be sent to what we called our reimbursement-disbursement section and paired with the receiving reports. If correct, and after auditing by both the contractor and the Government, a 1024 voucher would be issued. That voucher had to be approved by representatives of the Government and also by the Commanding Officer. Both the Field Auditor and the Commanding Officer signed the voucher. That went to an Army Finance Officer. He issued a check to Ford, Bacon & Davis in the amount of the voucher to replenish their revolving fund. This reimbursement was from an appropriation earmarked for the use of this plant and supervised by the Military at the plant. Ford, Bacon & Davis did not use any of its funds in financing the work carried

on at the plant. Government funds were used all the way through.

The Government issued what is known as "Ordnance Procurement Instructions". My department followed these instructions wherever they were applicable. A copy of the instructions was delivered to Ford, Bacon & Davis and they, too were required to comply with all applicable instructions.

The United States paid directly without using the facilities of Ford, Bacon & Davis all freight on Government bills of lading, all accounts due the Arkansas Power & Light Company, all telephone and teletype charges, and all charges against free issue material.

[fol. 24] Throughout the entire period of operations there was maintained at the plant a commanding officer or representative of the contracting officer. He was an army officer or representative of the contracting officer. He was an army officer assigned to the Ordnance Department, and it was his duty to supervise the operation of the plant. A number of Military personnel were stationed at the plant at all times. We required the maintenance of guards and the use of other safety precautions, pursuant to the directions and regulations of the Ordnance Department. The Contracting Officer specified the location of fences around the plant and around the various areas within the plant. A number of safety inspectors were maintained at the plant by the Government, checking upon safety regulations at all times.

Title to the [lad] on which the Arkansas Ordnance Plant was located was in the Government, and the Government owned all materials, tools, improvements, machines and other property located on the Ordnance premise.

ELLIS M. BROWN,

Affiant.

Subscribed and sworn to before me this 20 day of June, 1947.

EVA LASTER,

Notary Public.

My commission expires August 9, 1947.

Exhibit "B".

[fol. 25] (Affidavit of W. F. Whittle.)

State Of Arkansas,

County Of Pulaski.—ss.:

The affiant, W. F. Whittle, being first duly sworn, deposes and states:

My name is W. F. Whittle, and I reside at 124 South Oak, Little Rock. I am employed by the defendant, Ford, Bacon & Davis, and am in charge of their local office. I have been with the company since January, 1942. My first employment was as cost accountant at the Arkansas Ordnance Plant. Later I became paymaster. In the latter capacity I had charge of the records pertaining to time and pay rolls.

The Arkansas Ordnance Plant was operated under a cost-plus-a-fixed-fee contract between Ford, Bacon & Davis, Inc., and the United States Government. A copy of this contract is attached hereto as Exhibit 1. That is a type of contract which provides a method whereby the Government may hire management to operate one of its plants. The defendant, Ford, Bacon & Davis, Inc., did not finance the project in any way, and had no investment in it. All money for the operation of the plant was advanced by the Government. Employees were paid from funds advanced by the Government and all other expenditures made by the contractor were from advanced funds. The plant itself, and all improvements, tools, machines, and other property belonged to the Government.

In the beginning, the Government advanced a fixed amount to the contractor to be disbursed in accordance with the contract. This money was deposited in a local bank by the contractor and on disbursement the contractor then submitted vouchers to the Government for reimbursement on a revolving basis. The money was replenished by the Government to keep the funds at a sustained level. Throughout the period of operations the defendant, Ford, Bacon & Davis, in behalf of the Government, expended for materials the sum of \$15,495,437.44. During the same period the Government furnished direct materials of the ap-

proximate value of \$275,854,354.21. For direct materials the defendant expended \$9,574,602.34, and the Government furnished material of the approximate value of \$275,768,000. The contractor disbursed for the Government \$84,220,301.78, and the total Government expenditure was \$279,714,018.32. A statement of production costs is attached hereto as Exhibit 2.

[fol. 26] All purchases were audited by the Ordnance Department and approved for payment on 1034 Public Reimbursement Vouchers (standard Government form).

Of the productive materials, the Government furnished as free issue in excess of 90% of all materials used.

The records do not reflect the payment of any state sales tax on materials used at the plant. We were exempt from payment of sales tax by agreement between the Government and the State of Arkansas. The reason for the agreement was that the material was for the exclusive use of the United States and was not subject to the State tax. A copy of the ruling of the State Revenue Department is attached as Exhibit 2a. If any sales tax was paid it was in connection with very small purchases.

We were issued a set of Ordnance Procurement Regulations and Instructions by the Government. We were required to comply and did comply with these instructions. (Excerpts from these instructions are attached hereto and marked Exhibit 3.)

The Government required that materials ordered through Ford, Bacon & Davis be shipped to the Contracting Officer at the Arkansas Ordnance Plant. The Contracting Officer was an Army officer stationed at the plant to represent the Government. A copy of a standard form of Purchase Order is attached as Exhibit 3a.

In the great majority of cases where materials were shipped to the plant on commercial bills of lading a conversion was made to Government bills of lading. The only exceptions to this rule were in instances where there was no saving involved or where the saving would be of a minor nature. At the start of operations the Government, through the Ordnance Department, maintained a transpor-

tation and audit section at the plant to make conversions of commercial bills of lading to Government bills of lading. In order to make such a conversion the Government had to state that the property was Government property for Military use. All materials moving out of the plant were shipped on Government bills of lading.

[fol. 27] The Government, in its contract, retained the right to discharge any employee at the plant. The Government did exercise control over the hiring of personnel, and with certain types of personnel it was necessary that the Contracting Officer approved the hiring or firing in writing.

I estimate the maximum number of Army officers on the post was 30, and in the latter days of operation it dropped to about 5 or 6. A commanding officer was always maintained at the plant and the Ordnance Department had on its own payroll a large number of civilian employees. The duty assignments of officers stationed at the Arkansas Ordnance Plant on December 2, 1942, are set out in Arkansas Ordnance Plant Memorandum No. 113, copy of which is attached as Exhibit 3b. The Ordnance Department issued an Ordnance Safety Manual providing for the safety and methods of operation of the Plant. We were required to comply with the provisions of this manual. The Arkansas Ordnance Plant was classified as an ordnance establishment. An ordnance establishment is defined by the manual as an establishment under the direct control of the Chief of Ordnance.

Our production schedules came from the Field Director of Ammunition Plants at St. Louis. I understand they originated higher up in Washington, but they came to us from the Field Director, who was an officer of the Army. Ford, Bacon & Davis had no discretion relative to the schedules of operation or production as issued to them by the Government. We were required to meet their schedules. It was not necessary for Ford, Bacon & Davis, Inc. to requisition materials. When the Field Director's Office made out schedules it also made out allotments of materials, and they came to the plant automatically. The Government from time to time directed changes in the types of munitions we were making. Also, from time to

time they changed our methods of operation. We had no discretion in these matters.

Ford, Bacon & Davis was required to comply with all applicable provisions of the Ordnance Safety Manual. Pertinent provisions of the manual are attached and marked "Exhibit 4".

Section 8405.2 of Ordnance Procurement Instructions provides that property shipped to or from the Government of the United States on Government bill of lading is exempt from the transportation tax (26 U.S.C. 3475).

[fol. 28] O.P.I. Section 8500 exempts from the Federal excise tax the sale of any property for the exclusive use of the United States.

O.P.I. Section 9004.1 is as follows:

"The term 'New Ordnance Facility', as used in this Part, includes only the following facilities which are owned outright by the United States, are designated as a 'plant', a 'works', a 'depot', or a 'center' and are operated by Private contractors on a cost-plus-a-fixed-fee basis. At such times as any of the following revert to Government operation or are maintained by the Government in standby condition, they will no longer be considered a 'New Ordnance Facility' within the meaning of Part 9-Labor."

The 'Arkansas Ordnance Plant' is listed thereunder as a new ordnance facility and was designated as such on September 10, 1942.

Ford, Bacon & Davis, Inc., was required to purchase certain items on what is known as "Treasury Procurement Schedules". Typewriters came under this category. If we wanted a typewriter it was necessary that we request the Ordnance Department to procure it for us. Ordnance would prepare the proper Treasury Procurement Schedule. The typewriter would then be delivered to Ford, Bacon & Davis, and the bill was paid directly by the Government.

O.P.I. Section 5010.7 sets up the procedure for such purchases.

OPI Section 53002.1 provides for the designation of an Accountable Property Officer to be accountable for all property used in connection with the contract. Pursuant to that provision, the Ordnance Department designated an Army officer as property officer. He was accountable for all property and material purchased or used at the plant. The Government had title to and possession of all property used in connection with the operations of the Arkansas Ordnance plant.

The Government had title to the land occupied by the Arkansas Ordnance Plant at Jacksonville, Arkansas, and all improvements thereon.

All time cards were submitted to the Pay Roll Audit Section of the Ordnance Department at the end of each week for complete audit. In addition to this, the Ordnance Department made spot check audits daily throughout the week. On pay day the Ordnance Department would send out a man to watch the delivery of checks to employees. The Ordnance Department maintained a staff of men called "field checkers" who circulated among the various clock houses. They watched the employees in and clock [fol. 29] out and made spot check audits after the auditor for Ford, Bacon & Davis had computed the time. The Government auditor would stamp all the time cards to designate his approval.

At the beginning of operations a schedule of job classifications and wage rates was submitted to and approved by the Ordnance Department. Thereafter, we were required to submit all reports of hire, changes of status and all changes of classification or changes in wage rates to the Contracting Officer's Representative for his [written] approval before any change of status could become official. Examples of the action taken by the Ordnance Department on two submissions relative to changes in established wage rates are attached as Exhibits 5 and 6.

The Ordnance Department exercised supervision over all of the contractor's activities. The copies of documents attached as Exhibits 7, 8 and 9 are examples of the close supervision and control exercised by the Ordnance Department over the operation of the Arkansas Ordnance Plant.

The Ordnance Department not only determined and controlled the result of work performed at the Arkansas Ordnance Plant but also reserved the right to and did control and direct the method of doing the work.

Section 57200 of the Ordnance Procurement Instructions states that the United States Government has acquired exclusive jurisdiction over the Arkansas Ordnance Plant under date of September 10, 1942.

When employees at the plant traveled on official business of the plant they traveled on tax exempt tickets. Travel authorization certifying that the men were traveling on Government business and for the interest of the Government would be issued by the Commanding Officer, along with tax exemption certificates.

I was first employed at the Arkansas Ordnance Plant as cost accountant with the duty of designing and installing a cost accounting system and organizing and instructing the personnel in the Cost Accounting Department. Cost accounting involved every phase of the operation at the plant. It was necessary to maintain a staff of employees in the field at all times, and I spent at least two days each week circulating over the plant.

[fol. 30] Part of the material used at the plant was purchased outside the State and shipped to the plant on Government bill of lading. This property was purchased by Ford, Bacon & Davis, Inc., for the Government. Although Ford, Bacon & Davis issued its checks in payment, the checks were against an advance fund set up by the Government for that purpose. All purchases were audited by the Government, sometimes before they were made and sometimes afterward, but in every case audited. With possible minor exceptions, no state sales taxes, state property taxes, or automobile license taxes were paid on the property used at the Arkansas Ordnance Plant. Title to all such property was in the Government. The Government required the payment of Federal old age benefit and unemployment compensation taxes. We also were required to have workmen's compensation insurance.

The purchase orders for property purchased through the facilities of Ford, Bacon & Davis contained the following

instructions: "ship to Ordnance Property Officer, care of Ford, Bacon & Davis, Inc., Arkansas Ordnance Plant, Jacksonville, Arkansas." A copy of the regular purchase order form is attached hereto as Exhibit 3a. The Government took title to all property purchased at its point of origin.

A substantial amount of materials was purchased outside the State of Arkansas and shipped to the Arkansas Ordnance Plant in the manner set out above.

All completed products made at the plant were shipped by the Government, on Government bills of lading, to a Government agent at an Ordnance installation in the United States or to a Port Transportation Officer, for overseas shipment. A photostat of a standard form of shipping order is attached as Exhibit 10. A photostat of a duplicate bill of lading covering a shipment to an Ordnance facility in the United States is attached as Exhibit 11, and one covering a shipment to a Port Transportation Officer is attached as Exhibit 12.

The control over the employees was a dual control. The Government's representatives at the plant had the right to prohibit the employment of any person or require any person to be discharged. If we did not like this representative's ruling we had a right to appeal, but as a matter of practice we never did appeal from any such ruling.

[fol. 31] All employees at the Arkansas Ordnance Plant were paid for all activities performed by them which were compensable by express provision of any written or non-written contract, custom or practice in effect at the time. There was no agreement, written or otherwise, to pay employees at the plant for time required to travel to and from their places of work nor was there any custom or practice to this effect. The same is true regarding lunch periods.

Ford, Bacon & Davis, Inc., in good faith endeavored to discharge all obligations due employees under their contracts of employment at the Arkansas Ordnance Plant. All employees were paid for work performed at the Arkansas Ordnance Plant in conformity with and in reliance on regulations, orders, rulings, approvals, and interpretations.

of the Ordnance Department of the United States Army. The Ordnance Department approved and directed all wage and salary payments. This approval covered not only the hourly or weekly rate of pay but, in the case of hourly paid employees, the number of hours to be included in the work week.

W. F. WHITTLE,

Affiant.

Subscribed and sworn to before me this 20th day of June, 1947.

EVA LASTER,

Notary Public.

My commission expires August 9, 1947.

[fol. 32]

Exhibit "C".

(Affidavit of A. R. Clarke.)

State Of Arkansas,

County Of Pulaski. ss.:

The affiant, A. R. Clarke, being first duly sworn, deposes and states:

Mr. name is A. R. Clarke.

From August, 1941, until October, 1945, I was employed by Ford, Bacon & Davis, Inc., as personnel director at the Arkansas Ordnance Plant at Jacksonville, Arkansas. As the personnel director, I was in charge of the Personnel Department. One of the duties of the Personnel Department was the employment and termination of personnel at the plant.

The Secretary of Labor did not fix job classifications and wage rates for the Arkansas Ordnance Plant. The general manager of the plant appointed a committee consisting of

five or six department heads to set up proposed job classifications and wage rates for submission to the Ordnance Department. I was a member of this committee. This proposed schedule of classifications and rates was submitted to the general manager of the plant by the committee and in turn to the Contracting Officer's Representative. In some instances, the schedules were rejected or disapproved by the Ordnance Department, which at all times exercised final control over the schedules.

The schedules as finally approved provided for various job Classifications, and the hourly, weekly, semi-monthly or monthly rates of pay for employees so classified. It indicated which employees should be paid for work over 40 hours per week and which should not. Ford, Bacon & Davis, Inc., was instructed and required to follow the approved schedule in the employment and pay of employees at the Arkansas Ordnance Plant. We were not permitted to deviate from the schedule. No wage or salary payments were made except upon specific approval of the Ordnance Department.

[fol. 33] All wage and salary payments to employees at the Arkansas Ordnance Plant were made by the contractor in good faith in conformity with and in reliance on regulations, orders, rulings, approvals, and interpretations of the Ordnance Department of the United States Army.

There was no express provision of any written or unwritten contract for the payment to employees at the Arkansas Ordnance Plant for time consumed in traveling to or from their places of work or for any period of time deducted as a lunch period, or for any activities except such as were performed during their assigned tour of duty.

I was required to make several trips to Washington for the purpose of obtaining approval to changes in the schedules of wages and classifications. These adjustments were made through the Ordnance Department at Washington. In all instances we had to receive the approval of the Contracting Officer's Representative at the Plant before any new classifications or wage rates could be set up, or an existing classification or wage rate changed. In addition to

his approval, the approval of the Ordnance Department at Washington was necessary.

The Contracting Officer's Representative was an Army officer sent to the plant by the Government to exercise primary authority with respect to the administration of the contract and to supervise, as representative of the War Department, the carrying out of certain duties, among others being: The general supervision of the operation of the plant.

A. R. CLARK,

Affiant.

Subscribed and sworn to before me this 20th day of June, 1947.

C. ROBERT MOULTON,

Notary Public.

My Commission expires April 24, 1950.

[fol. 34]

Exhibit "D".

(Affidavit of Clifford Shaw)

State of Arkansas,

County of Pulaski.—ss.:

The affiant, Clifford Shaw, being first duly sworn, deposes and states:

My name is Clifford Shaw, and I reside at 200 North State Street, Little Rock, Arkansas. I am at the present time employed by the Bush-Caldwell Company.

I was formerly employed by Ford, Bacon & Davis, Inc., in April, 1942, as Assistant Technical Adviser. I continued in that capacity until September 6, 1943, at which time I was made Assistant General Superintendent. I remained in this position until my termination in October, 1945.

My duties in both of the aforementioned positions consisted of supervising and directing the work necessary to

meet the production schedules sent to the company by the Ordnance Department of the United States Army.

The plant was engaged solely in the manufacture of munitions of war under the direction of the Ordnance Department.

The Ordnance department from time to time would forward production orders to the Arkansas Ordnance Plant. These orders directed the production of certain types and quantities of munitions. The Ordnance Department directed not only the specifications of the completed product, but also the manufacturing method or process to be used. The orders were accompanied by detailed drawings and specifications for the completed product. They also were accompanied by a step-by-step manufacturing procedure.

A copy of Operations Manual No. 10 is attached hereto as Exhibit 13. The step-by-step procedures set forth in this manual were the procedures that we were instructed to use by the Ordnance Department. A copy of that part of Operations Manual No. 11 showing static tests to be made on one item is attached as Exhibit 14.

A copy of that part of Operations Manual No. 11 setting forth the procedure for the mixing of powder is attached as Exhibit 15. All of the instructions set forth in the Operations Manuals attached as Exhibits 13, 14, and 15 were sent to the contractor by the Ordnance Department, and we were required to follow these instructions verbatim, unless the [fol. 35] Department of Ordnance first approved a deviation.

CLIFFORD SHAW,

Affiant

Subscribed and sworn to before me this 21st day of July, 1947.

EVA LASTER,

(Seal)

Notary Public

My Commission expires August 9, 1947.

Contract No. W-ORD-519
DA-W-ORD-6

Cost-Plus-a-Fixed-Fee
New Ordnance Facility
Construction and Operation Contract

War Department

Contractor: Ford, Bacon & Davis, Incorporated, New York, New York.

Contract for: Architect-engineer services, construction of a new ordnance facility and installation of equipment therein, procuring production equipment, and options for training key personnel for and operating a new ordnance facility for the loading of fuzes, boosters, primers and detonators.

Place: At or near Jacksonville, Arkansas.

Estimated Cost of designing, engineering and constructing under Title I: \$14,812,188.00.

Fixed-Fee for designing, engineering and constructing under Title I: \$445,580.00.

Estimated Cost of procuring equipment under Title II: \$6,000,000.00.

Fixed-Fee for procuring equipment under Title II: \$40,000.00.

Estimated Cost of Training Key Personnel under Title III (Optional): \$150,000.00.

Fixed-Fee for Training Key Personnel under Title III: \$1.00.

Estimated Cost of operation under Title IV (Optional): \$33,525,000.00.

Fixed-Fee for operation under Title IV : \$540,000.00.

Payments to be made by Finance Officer, U. S. Army at
St. Louis, Mo.

The new ordnance facility, services and supplies to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same:

ORD 27,028	P99	A0141-02
ORD 27,029	P99	A0141-03
ORD 50,183	P510-31	A0025-13
ORD 50,184	P531-32	A0025-13

This contract is authorized by the following laws: The Act of July 2, 1940 (Public No. 703, 76th Congress), the Act of March 11, 1941 (Public No. 11, 77th Congress), and the Act of June 30, 1941 (Public No. 139, 77th Congress).

L. H. CAMPBELL, Jr.
Brig. Gen., U. S. Army

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W-ORD-519

DA-W-ORD-6

[fol.39]

Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

This Contract, entered into this 15th day of July, 1941, by The United States of America, hereinafter called the Government; represented by the Contracting Officers executing this contract, and Ford, Bacon & Davis, Incorporated, a corporation organized and existing under the laws of the State of New Jersey, with its principal office in the City of New York in the State of New York hereinafter called the Contractor, witnesseth that:

Whereas, The Government desires to have the Contractor design, construct and equip, and at the option of the Government, train key personnel, prepare to operate and operate a new ordnance facility more particularly described in Title I hereof, for the loading of fuzes, boosters, primers and detonators; and

Whereas, The accomplishment of the above-described work under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, As a result of such negotiations, the Secretary of War has directed that the Government enter into a cost

plus a fixed fee contract with the Contractor for the accomplishment of the above described work:

Now, Therefore, The parties hereto do mutually agree as follows:

[fol. 40]

Title I

Design, Engineering and Construction

Article I-A—Description of New Ordnance Facility

1. The new ordnance facility, hereinafter referred to as the "Plant", and designated as Arkansas Ordnance Plant, shall comprise a plant at or near Jacksonville, Arkansas, upon a site to be furnished and made available by the Government, for the loading of fuzes, boosters, primers and detonators (hereinafter sometimes referred to as "Ammunition"), having an estimated daily capacity based on a twenty-four (24) hour day as follows:

(a) 1 Line loading 15,000 Power-train fuzes.

(b) 3 Lines loading a total of 150,000 each of artillery fuzes and boosters.

(c) 2 Primer Lines loading a total of 100,000 artillery primers (21 grain).

(d) 1 Line producing 500,000 percussion elements.

(e) 4 Detonator Lines loading a total of 800,000 detonators.

(f) 3 Lines loading a total of 25,000 each of bomb fuzes, boosters and auxiliary boosters.

2. Said Plant shall consist of loading buildings, administration buildings, shops, railroads, roads, steam lines, air lines, electric lines, telephone lines, fencing, lighting, power house, dormitories, water and sewer systems, staff dwellings, messhall, cafeterias, guard quarters, fire fighting equipment and housing thereof, and other buildings and equipment necessary or appropriate for a loading plant of the approximate capacity aforesaid, with storage buildings adequate for about 30 days' supply of incoming materials and about 60 days production of finished product.

3. Said Plant shall conform, insofar as is practicable, with typical designs, drawings, specifications, details, standards or instructions contained in Appendix "A" hereto attached and made a part hereof, which are on file in the offices of the Chief of Ordnance and The Quartermaster General and which shall be promptly furnished to the Contractor or which will be furnished hereafter by the Contracting Officer; Provided, however, that no portion of said Plant shall consist of a permanent type of construction unless specifically authorized in advance by the Secretary of War; and Provided further, that nothing herein shall prevent the use of a type of construction sufficiently substantial for the use intended, in the judgment of the Contracting Officer, as evidenced by his approval of the plans and specifications.

Article I-B—Statement of Work

1. The Contractor shall, in the shortest reasonable time, furnish the labor, materials, tools, machinery, equipment, facilities, utilities, supplies not furnished by the Government, and services, and do all things necessary for the completion of the following work:

a. The construction of and the installation of equipment in the Plant described in Article I-A hereof, in accordance with the approved plans and specifications provided hereinafter.

b. The furnishing of all architectural and engineering services covering the design, preparation of drawings, plans and specifications, and field engineering and supervision necessary for the efficient execution and coordination of the construction and installation of equipment of said Plant as provided for hereunder, which services together with other provisions pertaining thereto are more particularly described and hereinafter set forth in Article I-E.

2. Supervision, direction and control of performance provided for in Article I-B shall be as follows:

a. The Contracting Officer appointed by the Chief of Ordnance will supervise the preparation of the general layout of the project and the detailed plans and working

drawings for the operating buildings and their equipment, including process steam generating plant and explosive storage buildings.

b. The Contracting Officer appointed by the Quartermaster General will supervise the preparation of the detailed plans and working drawings for roads, railroads, sewerage systems, water systems, electrical generating plants and transmission lines, heating plants, non-manufacturing buildings, such as offices, general warehouses and garages, and such miscellaneous construction as may be requested by the Chief of Ordnance. All designs must have the concurrence of the Contracting Officer appointed by the Chief of Ordnance.

c. Performance of the construction work of the entire project will be under the supervision of the Contracting Officer appointed by The Quartermaster General.

3. The Contracting Officer may, at any time, without notice to the sureties, if any, by a written order, issue additional instructions, require additional work or service, or [fol. 42] direct the omission of work or services covered by this Title F. No adjustment in the fixed-fee shall be made for any such changes unless the net total of such changes in the work or services results in more than a twenty-five percent (25%) increase or decrease in the capacity of the operating lines set forth in Section 1 of Article I-A of this Title I, or unless such changes in the work or services results in the addition or deletion of one or more of such operating lines. An equitable adjustment in the amount of the fixed-fee to be paid the Contractor shall be made for any increases or decreases in the work and services performed in connection with that portion exceeding the said twenty-five percent (25%) of such units, and the addition or deletion of one or more operating lines, and the contract shall be modified in writing accordingly. The adjustment of the fixed-fee under this title shall be made upon the completion or termination of the work and services under this title, and shall be subject to the approval of the Secretary of War. Insert on reverse side of sheet. P. G. (There shall be no adjustment in the amount of the fixed fees as provided herein nor shall there be any claims for increased compensation because of any errors and or omissions

made in computing the original estimates of cost hereunder or where the estimated costs vary from the actual costs. P. G.)

Article I-C—Estimates

1. It is estimated that the total cost of the work under this Title I will be approximately Fourteen Million Eight Hundred Twelve Thousand One Hundred Eighty-eight Dollars (\$14,812,188.00), excluding the Contractor's fee and the procurement of production equipment provided for in Title II hereof.

2. It is estimated that the completed Plant will be ready for utilization by the Government within ten (10) months after the approval date of this contract.

3. It is expressly understood that neither the Government nor the Contractor guarantees the correctness of any of the estimates set forth in this Article I-C. The estimated total costs set forth in this Article I-C are based upon the data now available and agreed to by both the Government and the Contractor, copies of which are on file in the offices of the Chief of Ordnance and The Quartermaster General.

Article I-D—Consideration

1. As consideration for its undertaking under this Title I the Contractor shall receive the following:

a. Reimbursement for expenditures as provided in Title V.

b. Rental for Contractor's equipment as provided in Title V.

c. A fixed-fee in the amount of Four Hundred Forty-five Thousand Five Hundred Eighty Dollars (\$445,580.00) which shall constitute complete compensation for the Contractor's services, including profit and all general overhead expenses.

[fol. 43]. 2. The Contractor's fixed-fee stipulated herein is based upon the understanding that the Contractor will subcontract portions of the work under this contract as follows (if none, so indicate):

ItemKind of Work

1. Plumbing, sprinklers, air conditioning.
2. Heating, ventilating.
3. Electrical Wiring.
4. Steel purchased erected, special fence erected.
5. Well drilling, overhead tanks.
5. Bonded roofing if required.

If work of categories other than or in addition to those mentioned above is sublet, or if work included in any of the above categories is performed by the Contractor's own force, all with the written approval of the Contracting Officer, the fixed-fee of the Contractor shall be decreased or increased accordingly, by an equitable adjustment on the basis of the decrease or increase of services made necessary by such changes.

Articles I-E—Character And Extent Of Architectural And Engineering Services

1st The Contractor shall, in the shortest reasonable time, preform the following services:

a. Make all necessary topographical and other surveys and maps; arrange for and supervise necessary test borings and other subsurface investigations.

b. Prepare layout plan of the proposed project and obtain approval thereof.

c. Prepare preliminary studies, sketches, and reports, for all structures, utilities and appurtenances.

d. Adapt Government designs, drawings, specifications and standards for buildings and other structures as necessary to meet the requirements of the approved layout of the proposed project, and prepare detailed designs, specifications and drawings in required form for which Government designs are incomplete or unavailable.

e. Obtain necessary permits and approvals from all local, State and Federal authorities. Should it become

necessary in the performance of the work and services for the Contractor to secure the right of ingress or egress to perform any of the work required by this Title I hereof on properties not owned or controlled by the Government, the Contractor shall, if practicable, secure the consent of the owner, his representative, or agent, prior to effecting entry on such property. In the event the owner requires the payment of any fee for a license to enter upon and/or use such property, the Contractor when so directed by the Contracting Officer, shall pay such fee and obtain a receipt therefor.

[fol. 44] f. Prepare estimates of the material quantities involved in the proposed project.

g. When preliminary drawings are approved by the Contracting Officer, prepare final designs, detailed working drawings and specifications in accordance with Government standards necessary for the effective coordination and efficient execution of the construction work and revise the drawings and specifications as required by the Contracting Officer. Drawings shall be prepared for permanent record, inked in on linen or as otherwise directed by the Contracting Officer, but in no case will these drawings be prepared in pencil or on paper; the specifications shall be mimeograph to produce the number of copies required by the Contracting Officer. There shall be included in the specifications all provisions which the Contracting Officer may direct to have incorporated therein relating to the advertising, negotiating, awarding of contract, conditions under which the work shall be done, and any special provisions required by statute or existing War Department regulations or instructions.

h. Prepare an estimate of the cost of the proposed project based on the approved designs, drawings and specifications therefor.

i. Assist the Contracting Officer in obtaining, analyzing and evaluating proposals or bids for a construction contract or contracts based upon the approved drawings and specifications.

j. Prepare record drawings in required form, or correct drawings and specifications to show construction as

actually accomplished; assist in preparation of the completion report for the project; and furnish for the approval of the Contracting Officer:

(1) Schedules and charts showing the sequence of operations in the construction of each of the several portions of the work.

(2) Estimates showing the amounts of critical and important materials and dates when such materials will be required on the site.

(3) Labor estimates showing the approximate number, trades and dates required to meet the schedule in (1) above.

(4) In addition to the requirement of Paragraph "r" of this Section 1 of Article I-E, periodical progress reports as required by the Contracting Officer showing the progress of the work and any deviation from the schedule in (1) above.

k. Establish a permanently monumented base line, all Governing lines, bench marks and grades, tied into the North American Datum unless specifically exempted by written instructions of the Contracting Officer.

[fol. 45.] l. Supervise the work included in this Title I to insure the construction of every part of the work in accordance with the approved drawings and specifications referred to in Paragraph "d" of this Section 1 of Article I-E, and within the areas and boundaries designated for the project.

m. Check and approve all shop and work drawings submitted in connection with the construction work to assure that they conform with approved drawings.

n. Make such field and laboratory tests of concrete and concrete aggregates and all other materials at the site or at any time or place as the Contracting Officer may require. Inspect and report to the Contracting Officer in writing as to the conformity or non-conformity of the workmanship and materials to specifications; and on the progress of the project.

o. Upon termination or completion of this contract, as determined by the Contracting Officer, and before final payment of the fixed-fee, the Contractor shall correct all permanent tracings to the satisfaction of the Contracting Officer to show all changes in the actual construction from the original drawings.

p. Without additional compensation the Contractor, or any member of the organization, when requested, shall consult and advise with the Contracting Officer on any questions which may arise in connection with the work.

q. Perform all other architectural and engineering services within the scope of this contract, required by the Contracting Officer.

r. The Contractor shall promptly, after the execution of the contract, prepare and submit to the Contracting Officer, for approval, a schedule showing the order in which the Contractor proposes to carry on the work, with dates on which he will start the several salient features of the work and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart at suitable scale so as to indicate with symbols the percentage completed at any time. The Contractor shall correct the progress schedule at the end of each week and shall immediately deliver to the Contracting Officer three copies of the same.

s. The Contractor shall furnish sufficient technical supervisory and administrative personnel to insure the prosecution of the work in accordance with the approved progress schedule. If, in the opinion of the Contracting Officer, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to [fol. 46] improve his progress and the Contracting Officer may direct him to increase working days per week, or hours of labor per day and failure to comply with such directions shall be deemed sufficient cause to terminate the contract.

t. When in the opinion of the Contracting Officer the Contractor's personnel and/or overhead is excessive for the proper performance of this contract, reductions thereof shall be made as required by the Contracting Officer.

2. The Government shall furnish the Contractor such available schedules of preliminary data, layout sketches, and other available information respecting sites, topography, soil conditions, outside utilities and equipment, and shall make available to the Contractor such Government designs, drawings, specifications, details, standards and safety practices as are on hand in the office of the Chief of Ordnance and The Quartermaster General and are applicable to the design, construction, and equipping of the said Plant.

3. All of the Contractor's notes and other data concerning the design, construction and equipping of the Plant shall become the property of the Government and the Government shall have full right to use said notes and other data for any purpose it may desire, without any claim on the part of the Contractor for additional compensation. All such notes and other data shall be delivered to the Government whenever requested by the Contracting Officer and, furthermore, access to such notes and data shall be restricted to trusted and duly authorized representatives of the Government and of the Contractor.

4. Expert Technical Assistance. When in the judgment of the Contractor the complexity and nature of the project are such as to require expert technical assistance, or services, or advice in connection with special phases of the work such as site planning, manufacturing processes, or other problems of a highly technical character, the Contractor may employ directly or by a service contract with the consent and approval of the Contracting Officer, such supplemental professional services as are necessary for the proper design and execution of the project.

Article I-F—Rates Of Wages—Non Rebate.

1. In accordance with the act of August 30, 1935² (49 Stat. 1011; 40 U. S. C. 276a and 276a-1), the following provisions shall apply to the work under this Title I:

a. The Contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any

account, the full amounts accrued at the time of payment, computed at wage rates not less than those established by [fol. 47] the Secretary of Labor for the work herein specified; regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics; and the scale of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the site of the work. The Contracting Officer shall have the right to withhold from the Contractor so much of accrued payments as may be considered necessary by the Contracting Officer to pay to laborers and mechanics employed by the Contractor or any subcontractors on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the Contractor, subcontractors, or their agents.

b. In the event it is found by the Contracting Officer that any Laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages, and prosecute the work to completion by contract or otherwise and the Contractor shall be liable to the Government for any excess costs occasioned the Government thereby.

2. The following provisions shall apply to the work under this Title I:

a. All wage rates, including compensation for overtime under Article I-G of this Title I, for laborers and mechanics engaged in work under this subcontract shall be approved in writing by the Chief of Branch or his duly authorized representative; and any amount paid by the Contractor to any laborer or mechanic in excess of the wage rate approved for such laborer or mechanic by the Chief of Branch shall be at the expense of the Contractor and shall not be reimbursed. When, in connection with the audit and

check by the Contracting Officer or his duly authorized representative, of the Contractor's payrolls prior to reimbursement as contemplated in Section 1 of Article I-D hereof, it is found that one or more laborers and/or mechanics have been paid wages at rates in excess of the wage rates approved as herein provided, the reimbursement made to the Contractor on account of such payrolls will not include such excess payments.

b. The Contractor shall furnish to the Government representative in charge at the site of the work covered by this contract, or if no Government representative is in charge at the site, shall mail to the Federal agency contracting for the work, within 7 days after the regular payment date of [fol. 48] each and every weekly payroll, an affidavit in the form prescribed by regulations issued by the Secretary of Labor and published in the Federal Register of March 1, 1941, 6 E. R. 1211, or any modification thereof pursuant to the act of June 13, 1934, 48 Stat. 948 (U. S. Code title 40, sections ~~276~~ b. and c.), sworn to by the Contractor or the subcontractor concerned or by the authorized officer or employee of the Contractor or subcontractor supervising such payment, to the effect that each and every person employed on the work has been paid in full the weekly wages shown on the pay roll covered by the affidavit; that no rebates have been or will be made either directly or indirectly to or on behalf of the Contractor or such subcontractor from the full weekly wages earned as set out on such pay roll; and that no deductions, other than permissible deductions, as defined in the said regulations pursuant to said act of June 13, 1934, and as described in said affidavit, have been or will be made, either directly or indirectly, from the full weekly wages earned as set out on such pay roll.

The Contractor shall comply with all applicable requirements of the said regulations of the Secretary of Labor under the act of June 13, 1934, and the requirements of this Paragraph of the contract shall be subject to all applicable provisions of such regulations.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work to insure fulfillment of the requirements of this Paragraph.

Article I-G—Eight-Hour Law—Overtime Compensation.

No laborer or mechanic doing any part of the work contemplated by this Title I, in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this Article. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this Title I shall be computed on a basic rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this Article a penalty of five dollars shall be imposed upon the Contractor for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this Article, and all penalties thus imposed shall be withheld for the use and benefit of the Government: Provided, That this stipulation shall be subject in [fol. 49] all respects to the exceptions and provisions of U. S. Code, title 40, sections 321, 324, 325, and 326, relating to hours of labor, as in part modified by the provisions of Section 5 (b) of Public Act No. 671, 76th Congress, approved June 28, 1940, and Section 303 of Public Act No. 781, 76th Congress, approved September 9, 1940, relating to compensation for overtime.

[fol. 50]

Title II.

Procurement Of Production Equipment.

Article II-A—Statement Of Work.

1. The Contractor shall, in the shortest reasonable time, determine the production equipment requirements for the Plant and shall, subject to the approval of the Contracting Officer, thereupon proceed to do all things neces-

sary and incident to the procurement of the production equipment required.

2. The Government reserves the right to furnish any production equipment necessary for the equipping of the Plant, provided such production equipment so to be furnished is of a suitable type and in satisfactory operating condition, upon so notifying the Contractor prior to any commitment by the latter therefor. In the equipping of the Plant the Contractor shall be free (but shall not be obligated) to use any production equipment of its own manufacture; upon advising the Government in advance as to the prices at which and the conditions upon which such production equipment will be supplied, which prices and conditions, however, shall not be less favorable than those quoted to third parties for similar quantities and deliveries, any may be quoted without regard to the provisions of Section 6 of Article V-A of Title V. In the event the Government is able to obtain production equipment of equal quality and quantity at a lower price or on more favorable conditions from any responsible competitive source or from its own manufacture, it may undertake to do so upon so informing the Contractor within ten (10) days after being advised of the Contractor's price for such equipment.

Article II-B—Estimates.

It is estimated that the total cost under this Title II will be approximately Six Million Dollars (\$6,000,000.00), exclusive of the Contractor's fee. It is expressly understood, however, that neither the Government nor the Contractor guarantees the correctness of this estimate. The estimated total cost set forth in this Article II-B is based upon an estimate agreed to by both the Government and the Contractor, a copy of which is on file in the office of the Chief of Ordnance.

Article II-C—Consideration.

As consideration for its undertaking under this Title II the Contractor shall receive the following:

1. Reimbursement for expenditures as provided in Title V.

[fol. 51] 2. A fixed-fee in the amount of Forty Thousand Dollars (\$40,000.00), determined by negotiations between the Contractor and the Chief of Ordnance, which shall constitute complete compensation for the Contractor's services, including profit other than that included in the prices quoted pursuant to Section 2 of Article II-A of this Title II.

Article II-D—Eight Hour Law—Overtime Compensation.

The provisions of Article I-G of Title I shall apply to the work under this Title II.

[fol. 52] Title III.

Training Of Key Personnel (Optional).

Article III-A—Statement Of Work.

1. The obligation of the Contractor to proceed with the work under this Title III shall be conditioned upon receipt by the Contractor of notice in writing from the Contracting Officer so to do, and the prior appropriation and allocation of funds necessary therefor. Upon receipt by the Contractor of such notice, the Contractor shall hire or select the key personnel necessary for the operation of the Plant, and when such personnel is available shall proceed to train such personnel in the duties and functions of their respective positions, at the Contractor's plants or elsewhere, in order that they will have obtained experience with the processes and operations involved in the Plant at any time when the Government shall exercise its option under Section 1 of Article IV-A of Title IV.

2. After completion of the work under Section 1 of this Article III-A, the Contractor shall, if directed by the Contracting Officer, until a date not in excess of Fourteen (14) months after the approval of this contract, hold the group of key personnel trained hereunder in readiness for operation of the Plant should the Government exercise its option under Section 1 of Article IV-A of Title IV.

3. The extent and character of the work to be done by the Contractor under this Title III shall be subject to the approval of Contracting Officer to whom the Contractor

shall report and be responsible. In the event that there should be any dispute with regard to the extent and character of the work to be done the matter shall be determined as provided in Article VII N of Title VII.

Article III-B—Estimate.

It is estimated that the cost of the work under this Title III will be approximately One Hundred Fifty Thousand Dollars (\$150,000.00), exclusive of the Contractor's fee. It is expressly understood that neither the Government nor the Contractor guarantees the correctness of this estimate. The estimated total cost set forth above is based upon an estimate agreed to by both the Government and the Contractor, a copy of which is on file in the Office of the Chief of Ordnance.

[fol. 53] Article III-C—Consideration.

As consideration for its undertaking under this Title III the Contractor shall receive the following:

1. Reimbursement for expenditures as provided in Title V.
2. A fixed-fee of One Dollar (\$1.00) which shall constitute complete compensation for the Contractor's services under this Title III, including profit.

Article III-D—Eight Hour Law—Overtime Compensation.

The provisions of Article I-G of Title I shall apply to the work under this Title III.

[fol. 54] Title IV.

Operation Of Plant (Optional)

Article IV-A—Statement Of Work.

1. The obligation of the Contractor to proceed with the work under this Title IV shall be conditioned upon receipt by the Contractor of the notice provided for in Section 1 of Article III A hereof and receipt by the Contractor within fourteen (14) months after the date of approval of this contract of notice in writing from the Contracting Officer

so to do, and the prior appropriation and allocation of funds necessary therefor. Immediately upon receipt by the Contractor of such notice, and concurrently with the performance of the work required of it under Titles I, II and III hereof, the Contractor shall undertake all preparations necessary for the subsequent operation of the Plant, including the necessary training of personnel for such operation in addition to the key personnel trained pursuant to Title III hereof, and all other services incident to setting up an efficient and going operating force.

2. As each operating unit of the Plant is completed and ready for operation and the necessary preparation for operation and training of personnel has proceeded to a point where operation is practicable the Contractor shall proceed to operate it as directed from time to time by the Contracting Officer, irrespective of whether or not the construction and equipping of the Plant as a whole shall have been completed.

3. Notwithstanding the fact that the construction and equipping of the Plant as a whole shall not have been completed, when all operating units thereof are completed and ready for operation without incurring hazards because of the lack of completion of the construction and equipping of the Plant as a whole beyond those usual in the normal operation of a plant of the type provided for herein, the Contractor shall so notify the Contracting Officer in writing, and from and after the date of said notice the Contractor shall operate said Plant for a period of twelve (12) months.

4. Upon written notice to the Contractor not less than ninety (90) days before the anticipated completion of the operation provided for in Section 3 next above, the Government may, at its option, authorize the continued operation of the Plant for an additional period of twelve (12) months and the Contractor shall undertake such continued operation under the terms and conditions of this contract applicable to the operation of the Plant (including those relating to the fixed fee for such additional operation, which fee shall be that provided in Section 3 of Article IV-C hereof). Further continued operation, if any, of said Plant by the Contractor after said additional operation shall be subject to mutual agreement.

[fol. 55] 5. The work under this Title IV shall be performed in accordance with the current applicable specifications which will be furnished by the Contracting Officer.

6. The Government shall furnish all explosives and all metal parts for the loading of the Ammunition, including shipping materials and containers, when and as requisitioned from time to time by the Contractor, to be delivered when required, f.o.b. said Plant, in sufficient quantities to enable the Contractor to carry on the operation of the Plant provided for in this Title IV. The Contractor shall be under no obligation to accept or store or permit to be stored at said Plant any explosives which would render the work to be done by the Contractor hereunder hazardous beyond what is usual in the normal operation of a plant of the type provided for herein.

7. In carrying out the work under this Title IV the Contractor is authorized and shall do all things necessary or convenient in the operating and closing down of the Plant, or any part thereof, including (but not limited to) the employment of all persons engaged in the work hereunder (who shall be subject to the control and constitute employees of the Contractor), the providing of all materials and supplies except such as the Government is to furnish or supply as elsewhere specifically provided herein, the storage of materials and supplies and of the finished products to the extent of the storage facilities at said Plant, the preparation of the product for shipment and the loading of same on cars or other carriers in accordance with the Government's shipping instructions.

8. In providing materials and supplies as provided in Section 7, next above, the Contractor shall be free (but shall not be obligated) to use any materials or supplies of its own manufacture, upon advising the Government in advance as to the prices at which and the conditions upon which such materials and supplies will be provided, which prices and conditions, however, shall not be less favorable than those quoted to third parties for similar quantities and deliveries, and may be quoted without regard to the provisions of Section 6 of Article V-A of Title V. In the

event the Government is able to obtain materials or supplies of equal quality and quantity at a lower price or on more favorable conditions from any responsible competitive source or from its own manufacture, it may undertake to do so upon so informing the Contractor within ten (10) days after being advised of the Contractor's price for such material and supplies.

9. The Contractor shall maintain a satisfactory system of inspection, gaging and gage checking concurrent with operations, and no ordnance material shall be submitted for the Government inspector's approval which has not previously been inspected by agents of the Contractor and found to be up to the contract standard.

Article IV-B—Estimates

It is estimated that the cost of the work under this Title IV will be Thirty-three Million Five Hundred Twenty-five Thousand Dollars (\$33,525,000.00) exclusive of the cost of continued operation covered by the option therefor provided in Section 4 of Article IV-A hereof, and exclusive of the Contractor's fee. It is expressly understood that neither the Government nor the Contractor guarantees the correctness of this estimate. The estimated total cost set forth above is based upon an estimate agreed to by both the Government and the Contractor, a copy of which is on file in the Office of the Chief of Ordnance.

Article IV-C—Consideration

As consideration for its undertaking under this Title IV the Contractor shall receive the following:

1. Reimbursement for expenditures as provided in Title V hereof.
2. A fixed-fee for the work provided for in Sections 1, 2 and 3 of Article IV-A hereof, in the amount of Five Hundred Forty Thousand Dollars (\$540,000.00), which fee shall constitute complete compensation (except for continued operation) for Contractor's services, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

3. A fixed-fee for continued operation provided in Section 4 of Article IV-A hereof, in the amount of Four Hundred Twenty Thousand Dollars (\$420,000.00) for twelve (12) months continued operation, which fee shall constitute complete compensation for Contractor's services during such continued operation, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

Article IV-D—Walsh-Healey Act

1. The following representations and stipulations pursuant to the Walsh-Healey Public Contracts Act (Act of June 30, 1936; 49 Stat. 2036; 41 USC 35-45), shall apply to the operation of the Plant under this Title IV of this contract.

a. The Contractor is the manufacturer of, or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

b. All persons employed by the Contractor in the manufacture or furnishing of all materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles or equipment are to be manufactured or furnished under the contract; provided, however, that this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

[fol. 57] c. No person employed by the Contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such

person is paid such applicable overtime rate as has been set by the Secretary of Labor.

d. No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the Contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

e. No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the state in which the work or part thereof is to be performed shall be prima facie evidence of compliance with this paragraph.

f. Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel the same and to make open market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages

shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: Provided, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the United States of America.

[fol. 58] g. The Contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the Act available for inspection by authorized representatives of the Secretary of Labor.

h. The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.00.

2. Paragraph b of Section 1 of this Article IV-D with respect to wages is inoperative due to lack of determination by the Secretary of Labor of prevailing minimum wage rates for the industry involved.

[fol. 59]

Title V.

Cost of the Work and Payment Therefor

Article V-A—Reimbursement for Contractor's

Expenditures

1. The Contractor shall be reimbursed in the manner hereinafter described for such of its actual expenditures in the performance of the work under this contract, as may be approved or ratified by the Contracting Officer, and as are included in the following items:

a. All labor, materials, tools, machinery, equipment, facilities, supplies, utilities and services necessary for either temporary or permanent use for the benefit of the work, including the training of operating personnel.

b. All subcontracts made in accordance with the provisions of this contract.

c. Transportation, loading, unloading and Storage charges on materials, supplies, and equipment.

d. Transportation and traveling expenses to and from the site of the Plant of the necessary field forces for the economical and successful prosecution of the work; transportation and traveling expense of such other employees of the Contractor whose full time is devoted to the work under this Contract as is actually incurred in connection with such work; and costs and expenses reimbursed to permanent employees of the Contractor in connection with the work under Title IV hereof transferred to or from the Plant on account of transportation of themselves, their families and their household goods.

Reimbursement for transportation and traveling expenses will be limited to the cost of transportation including Pullman where necessary and an allowance of Six Dollars (\$6.00) per day ~~Bolieu~~ of all other expenses. Transportation by automobile in such required travel shall be reimbursed at the rate of Five Cents (\$.05) per mile as representing the actual cost of such transportation.

All travel shall be either authorized or approved in writing by the Contracting Officer. Should the Contractor, or any representative thereof, remain in a travel status in excess of six (6) days at any one time, not including the time consumed in travel, the cost for such excess travel status shall be at the expense of the Contractor, unless otherwise ordered in writing by the Contracting Officer.

e. Expenses of procuring labor and expediting the production and transportation of material, supplies and equipment.

[fol. 60] f. Salaries of employees of the Contractor engaged directly on the work provided hereunder whether at the Plant or employed full time at the Contractor's offices. In case the full time of any employee of the Contractor at the Plant is not applied to the work, his salary shall be included in this item only in proportion to the actual time applied thereto. No person shall be assigned to service by the Contractor as superintendent of construction or operation, chief engineer, chief purchasing agent,

chief accountant, or similar position in the Contractor's organization at the Plant, or as principal assistant to any such person until there has been submitted to and approved by the Contracting Officer a statement of the previous previous salary, proposed salary, qualifications, and experience of the person selected for such assignment. The regular salary or compensation rate of any such person shall not be in excess of the highest salary or compensation rate received by him during the year preceding the date of this contract plus such increase as the Contracting Officer may approve. The payment of any excess salary over such scheduled amounts shown in the approved salary schedule agreed to at the time and as shown in the record of negotiations for this contract shall not be reimbursable, unless and until the Chief of Branch has so approved in writing.

g. Buildings, trade fixtures and equipment required for necessary field offices, commissaries, hospitals, and other facilities, and the cost of maintaining and operating such field offices, commissaries, hospitals and other facilities; provided that the Contractor may enter into a contract with any third party or parties for the operation of any of the facilities provided for herein, in which event such contract shall be reduced to writing and the terms thereof subject to the prior written approval of the Contracting Officer.

h. Premiums on such bonds and insurance policies as the Contracting Officer may approve or require as reasonable necessary for the protection of the Government or the Contractor.

i. Losses and expenses, not compensated by insurance or otherwise (including settlements made with the written consent of the Contracting Officer), actually sustained by the Contractor in connection with the work and found and certified by the Contracting Officer to be just and reasonable unless reimbursement therefor is expressly prohibited.

j. The cost of reconstructing and replacing any of the work destroyed or damaged, and not covered by insurance, but expenditures under this item must have the written authorization of the Contracting Officer in advance.

k. Payments made by the Contractor under the Social Security Act (employer's contribution) and any disbursements required by law which the Contractor may be required on account of this contract to pay on or for any plant, equipment, process, organization, materials, supplies, or personnel; and, if approved in writing by the Contracting Officer in advance, permit and license fees and royalties on patents used including those owned by the Contractor.

[fol. 61] l. While the Contractor shall make every reasonable effort to have the finished product conform to the drawings and specifications referred to in Title IV hereof, it is recognized that variances therefrom are unavoidable and the Contractor shall be allowed all costs determined in accordance with this Article for re-working material because of rejection and for material finally rejected.

m. In connection with the work under Title IV only, extra compensation to employees, discontinuance wages and charges under welfare and other employee relations plans maintained by the Contractor; Provided that the Government shall be chargeable therefor only insofar as the same are consistent with the general employee relations policies existing throughout the Contractor's organization, or are incurred pursuant to agreement made as a result of collective bargaining with the representatives of employees, and are expressly authorized in writing by the Contracting Officer.

n. Accounting (including salaries and other expenses) in connection with special audits of accounts for the government in connection with work hereunder.

o. Expenses in connection with any temporary or permanent closing down of the plant.

p. 1. The fixed amount of Two Thousand Dollars (\$2,000.00) per month for each calendar month of operation, payable at the close thereof, subsequent to the commencement of the complete operation provided in Section 3 of Article IV-A of Title IV (including continued operation under Section 4 of such Article IV-A), as complete com-

compensation, including all general overhead, for all services performed by the Contractor at its New York, N. Y., offices in connection with the work under Title IV hereof, except for the wages, salaries and transportation and traveling expenses of employees of the Contractor who devote full time to the work under such Title IV. The initial amount shall be payable at the close of the calendar month during which such operation commences.

2. For the purposes of this paragraph p, the term "full time" shall be deemed to refer to the time of employment of those employees engaged solely upon the work under this contract and who are carried on payrolls separate from the Contractor's payrolls relating to its other business and not to employees of the Contractor engaged part time on the work under this Contract and part time on the Contractor's other business.

q. Disbursements incident to payment of payrolls, including but not limited to, the cost of disbursing cash, necessary guards, cashiers and pay masters. If payments to employees are made by check, facilities for cashing checks must be provided without expense to employees, and the Contractor shall be reimbursed therefor.

[fol. 62] r. ~~Rental~~ actually paid by the Contractor, at rates not to exceed those approved by the Contracting Officer, for construction plant in sound and workable condition exceeding \$300 in value as may be necessary for the proper and economical prosecution of the work. Each contract for the rental of construction plant or parts thereof by the Contractor from third parties shall be in a form prescribed by the Contracting Officer, shall be subject to his approval and shall include provisions (1) that the lessor deliver to the Government title to such construction plant or parts thereof free of all liens and encumbrances when and if the total rental paid to the lessor for any item of construction plant or part thereof shall equal the valuation thereof, plus one per cent (1%) per month for each month or fraction thereof such part has been in use and (2) that at the completion of the work being performed under Title I hereof or upon termination of the contract as provided in Article VI, the Government may at its option purchase any part of such construction plant by paying to the lessor the

difference between the valuation of such part or parts, plus one percent (1%) per month for each month or fraction thereof such part or parts have been in use and the total rentals theretofore paid for such parts or parts, provided, however, that either of such provisions may be omitted from such rental agreements if the omission is approved by the Chief of Branch.

s. Loading and unloading of construction plant, owned or rented by the Contractor and of such repair parts and spare parts as are not included in the rental and as are not made necessary by defects in such plant, or parts thereof, or by the fault or negligence of the Contractor or his employees; the transportation thereof to the place or places where it is to be used in connection with said work and return transportation to the point of original shipment or equivalent mileage, provided that the cost of return transportation shall not exceed the cost of transportation to the point of original shipment and provided that charges for transportation over distances in excess of 500 miles must have the written authorization of the Contracting Officer in advance; and the installation and dismantling thereof.

t. Repairs and repair parts, as are not included in the rental or made necessary by the fault or negligence of the Contractor or his employees.

u. Temporary rights in land required in connection with the work.

v. Such other items as should, in the opinion of the Contracting Officer, be included in the cost of the work. When such an item is allowed by the Contracting Officer, it shall be specifically certified as being allowed under this paragraph.

[fol. 63] 2. Rental for Contractor's Equipment. Rental shall be paid at the rates indicated in the "Contractor's Equipment Rental Schedule, War Department, Office of The Quartermaster General", dated May, 1941 for such plant or parts thereof as he may own and furnish as shown in the record of negotiations, both of which documents are on file in the Office of The Quartermaster General. Except as specified below such rental shall begin at the date of de-

livery of the plant, or parts thereof, to a common carrier for shipment to the site of the work, as evidenced by bill-of-lading or other satisfactory evidence covering such shipment. In the event the plant or parts thereof, is conveyed by the Contractor, the rental shall start at time transport to the site begins, but shall not exceed the equivalent time of shipping by common carrier. Unless title thereto passes to the Government at an earlier date, the rental shall terminate on the date of notice by the Contracting Officer to the Contractor that such plant or parts thereof are no longer required provided that rental shall continue to the date shipment of such plans or parts thereof is initiated, if such shipment is initiated with delay. If such plant, or any part thereof, is not in sound and workable condition when it arrives at the site of the work, the rental period therefor shall not begin until such plant, or parts thereof, shall have been placed in sound and workable condition at the expense of the Contractor, and no rental therefor shall be paid for any prior period. If such plant, or parts thereof, cannot be placed in sound and workable condition, no transportation charges for the shipment thereof shall be included in the cost of the work or paid, either directly or indirectly, by the Government. Determination as to whether such plant, or parts thereof, are in sound and workable condition shall, in every instance, be made by the Contracting Officer. Slight delays in the use of such plant, or parts thereof, caused by necessary minor or field repairs and replacements shall not interrupt the rental period, but no rental shall be paid for the period of any delay in the use of such plant, or parts thereof, caused by other than necessary minor or field repairs. The value shown in the record of negotiations hereinbefore referred to shall be deemed final unless the Contracting Officer shall, within ten days after the machinery has been set up and working, modify or change such valuation. When and if the total rental paid to the Contractor for any such part shall equal the valuation thereof, plus one per cent (1%) per month for each month or fraction thereof such part has been in use, and the Contractor shall convey title thereto to the Government free of all liens and encumbrances; at the completion of the work under Title I or upon termination of the contract as provided in Title VI, the Government may at its option purchase any part of such construction plant by paying to the

Contractor the difference between the valuation of such part of parts, plus one per cent (1%) per month for each month or fraction thereof such part or parts have been in use and the total rental thereto-foré paid for such part or parts.

[fol. 64] General.

3. The Government reserves the right to furnish any materials, construction equipment, machinery, tools, or services, including communication services necessary for the completion of the work. The Contractor shall cause the foregoing equipment and machinery to be suitably marked with an identifying mark or symbol, indicating that such items are the property of the United States. Upon the completion of this contract or upon demand, the Contractor shall return such equipment and machinery to the place designated by the Contracting Officer.

4. The Government reserves the right to pay directly to common carriers any and all transportation charges on construction plant, materials, machinery, equipment and supplies.

5. The Government reserves the right to pay directly to the persons concerned all sums due from the Contractor for labor, materials, or other charges.

6. No salaries of the Contractor's executive officers or partners, no part of the expense incurred in conducting the Contractor's main office or regularly established branch offices, and no overhead expenses of any kind, except as specifically authorized in Section 1 of this Article, shall be included in the cost of the work under this contract; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

7. The Contractor shall, to the extent of its ability, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions and bonifications, and when unable to take advantage of such benefits, it shall promptly notify the Contracting Officer to that effect and the reason therefor. In determining the actual net cost of articles and materials of every kind required for the purposes of this contract, there shall be deducted from the gross cost

thereof all cash and trade discounts, rebates, allowances, credits, salvage, commissions and bonifications which have accrued to the benefit of the Contractor or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of the Government, or lost through compliance with the provisions of Section 5 of Article V-C, shall not be deducted from gross costs.

8. All revenue received by the Contractor from the operations of the hospital, commissaries, or other facilities, or from rebates, discounts, refunds, etc., shall be accounted for by the Contractor and applied in reduction of the cost of the work.

[fol. 65] Article V-B—Payments.

Reimbursement For Cost.

1. a. The Government will currently reimburse the Contractor for expenditures made in accordance with Article V-A of this Title V, upon certification and delivery to and verification by the Contracting Officer of the original signed pay rolls for labor, the original receipted invoices for materials, equipment, etc., or other original papers satisfactory to the Contracting Officer. Reimbursement will be made as promptly as possible, generally weekly, but may be made at more frequent intervals if the conditions so warrant. All payments made under this paragraph a of Section 1 shall be subject to the provisions of Article V-C.

b. Payment of the sum provided in subparagraph 1 of paragraph p, of Section 1 of Article V-A shall be made as provided therein.

2. Rental for Contractor's Equipment. Rental as provided in Section 2 of Article V-A of this Title V, for such construction plant or parts thereof as the Contractor may own and furnish shall be paid monthly upon presentation of proper vouchers.

Payment Of The Fixed-Fees.

3. a. The fixed-fee provided for in Article I-D of Title I shall be paid in partial payments, less ten percent (10%) of each such partial payment, on the last working day of

each calendar month from and after the approval date of this contract, as it accrues, based upon estimates made by the Contractor and approved by the Contracting Officer of the percentage of completion of the work and services provided for in Title I.

b. The fixed-fee provided for in Article II-C of Title II shall be paid in partial payments, less ten percent (10%) of each such partial payment, on the last working day of each calendar month from and after the approval date of this contract, as it accrues, based upon estimates made by the Contractor and approved by the Contracting Officer of the percentage of completion of the work and services provided for in Title II.

c. The fixed-fee of One Dollar (\$1.00) provided for in Article III-C shall be paid upon the completion of the work provided therein.

d. The fixed-fee of Five Hundred Forty Thousand Dollars (\$540,000.00) provided for in Section 2 of Article IV-C of Title IV shall be payable as follows:

(1) One Hundred Twenty Thousand Dollars (\$120,000.00) payable in four (4) equal monthly installments of Thirty Thousand Dollars (\$30,000.00) each, less 10% of each such installment. The first such installment shall be payable on the last working day of the calendar month in which the first operating line of the plant is completed and ready [fol. 66] for operation, and the remaining installments shall be payable on the last working day of the next succeeding three (3) calendar months.

(2) Four Hundred Twenty Thousand Dollars (\$420,000.00) payable in twelve (12) equal monthly installments of Thirty-five Thousand Dollars (\$35,000.00) each, less 10% of each such installment. The first such installment shall be payable on the last working day of the calendar month during which operation of the completed plant shall be commenced under Section 3 of Article IV-A of Title IV, and the remaining installments shall be payable on the last working day of the next succeeding eleven (11) calendar months.

c. The fixed fee of Four Hundred Twenty Thousand Dollars (\$420,000.00) provided by Section 3 of Title IV-C of Title IV for continued operation under Section 4 of Article IV-A of Title IV shall be payable in twelve (12) equal monthly installments of Thirty-five Thousand Dollars (\$35,000.00) each, less 10% of each such installment. The first such installment shall be payable on the last working day of the calendar month during which the additional operation provided for in such Section 4 of Article IV-A of Title IV shall have commenced and the remaining installments shall be payable on the last working day of the next succeeding eleven (11) calendar months.

Payments by Contractor

4. If bills for purchase of materials, machinery, or equipment, or payrolls covering employment of laborers or mechanics incurred by the Contractor or by any subcontractor under this contract are not promptly paid by the Contractor or subcontractor, as the case may be, the Contracting Officer may, in his discretion, withhold from payments otherwise due the Contractor an amount equivalent to the amount of any such bill or pay roll until such bill or pay roll is paid. Should the Contractor neglect or refuse to pay such bills or payrolls or to direct any subcontractor to pay such bills or pay rolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right to pay such bills or pay rolls directly provided such bills or pay rolls are not disputed in good faith by the Contractor or subcontractor, and in such event a deduction equal to five per cent (5%) of the amount so paid directly shall be made from the Contractor's fee.

Final Payment

5. Upon completion of the work under Titles I and II and its final acceptance in writing by the Contracting Officer, and again upon the completion of the work under Title IV, the Government shall pay to the Contractor the unpaid balance of the cost of the work determined under Title V hereof, and of the fees, less any sum that may be necessary to settle any unsettled claims for labor or materials, or any claim the Government may have against

the Contractor. The Contracting Officer shall accept or reject the completed work with reasonable promptness. The Contractor shall, if required, furnish the Government with a release of all claims against the Government arising under and by virtue of this contract other than such claims, if any, as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein.

[fol. 67]. Article V C—Advances

1. At any time, and from time to time, after the execution of this contract the Government, at the request of the Contractor, and subject to the approval of the Chief of Ordnance as to the necessity therefor, shall advance to the Contractor without payment of interest thereon by the Contractor, a sum or sums not in excess of thirty percent (30%) of the estimated cost of the work under this contract (as increased or decreased pursuant to the provisions of Article VII C of Title VII or as increased pursuant to the provisions of Article IV A of Title IV). When approximately sixty percent (60%) of said estimated cost (as increased or decreased pursuant to the provisions of Article VII C of Title VII or as increased pursuant to the provisions of Article IV A of Title IV) shall have been paid under Section I of Article V B, a revised estimate of such costs shall be made by the Contractor; and if it appears that the then estimated cost exceeds the amount of the original estimate (increased or decreased as provided above); and the revised estimate is approved by the Chief of Ordnance, the Government shall under the conditions stated above advance to the Contractor without interest, not to exceed thirty percent (30%) of such excess. Such advance or advances shall be made in each case upon the furnishing of such surety bonds in such penal sums not exceeding the total aggregate advance as the Secretary of War may prescribe; Provided, that the Secretary of War shall have prescribed the furnishing of a surety bond in connection with such advances, as security additional to that provided for in this contract; and Provided, Further, that if at any time the Secretary of War deems the security for any advance or advances theretofore made inadequate, the Contractor shall furnish on demand such other security, in the form of a surety bond or surety bonds, as will be

satisfactory to the Secretary of War but at no time shall the Contractor be required to maintain in force a safety bond or surety bonds, the total aggregate penal sums of which exceed the aggregate amount of the advances authorized by the Secretary of War under this contract. It is understood that the Government will advance to the Contractor, pursuant to this Article V C, the sums currently necessary to the Contractor for working capital to carry on the work contemplated under this contract, not in excess of thirty percent (30%) of the estimated cost of such work.

2. Whenever there shall be paid to the Contractor, pursuant to Section 1 of Article V B reimbursement which, when added to the advance payment or payments made pursuant to Section 1 of this Article V C, shall equal the full amount of the estimated cost of said work under this contract (as increased or decreased pursuant to the provisions of Section 1 of this Article V C), no additional payment on account of said work shall be made to the Contractor by the Government until said advance payments are expended; Provided, however, that if the total cost of the work shall be in excess of the amount so paid to the Contractor including said advance payments, the Government, upon presentation of satisfactory evidence, shall currently [fol. 68] and promptly reimburse the Contractor to the extent of such excess cost (subject to any delay in the availability of appropriated funds); Provided, further, that if upon termination of the contract for other than the default of the Contractor there shall remain due the Government from the Contractor any sum theretofore advanced by the Government under this contract and not fully liquidated as above provided, the same shall be applied against any payments due the Contractor and any remaining balance of such sums shall be returned to the Government forthwith after final audit by the Government of all accounts hereunder.

3. In the event of cancellation or termination of this contract because of the default of the Contractor, the Contractor agrees to return to the Government, upon demand, without set-off of any sum alleged to be due the Contractor, the outstanding balance of any advance payment; Pro

vided, however, that the Contractor may retain in the account an amount sufficient to meet the outstanding obligations incurred by it in good faith under this contract pursuant to authorization by the Contracting Officer until assumption and discharge of such obligations by the Government or final disallowance thereof. Furthermore, if, in the opinion of the Chief of Ordnance, the unliquidated balance of the advance or advances made by the Government under this contract exceeds the amount necessary for the current needs of the Contractor, as determined by the Chief of Ordnance, the amount of such excess shall, upon demand made by the Chief of Ordnance, be promptly returned to the Government and will be credited against the balance due the Government for advances previously made. If the demand made in either event set forth above is not met within fifteen (15) days after the receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) per annum from the date of the demand until payment is made.

4. All funds received as advance payments under this contract, together with all funds received as reimbursements for the cost of the work under paragraph a of Section I of Article V-B of this contract, shall be deposited in a special bank account or accounts separate from the Contractor's general or other funds in a bank which is a member of the Federal Reserve System. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose and shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this contract and not for the general business of the Contractor. Balances in such special account or accounts shall at all times secure the repayment of such advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances, which lien shall be superior to any lien of the bank upon such account or accounts by virtue of assignment or otherwise; Provided, however, that any bank in which such funds are deposited shall have no obligation whatever with respect to the use or disposition by the Contractor of funds withdrawn from such account or accounts or be liable for misuse by the Contractor of funds withdrawn prior to the receipt by

such bank of notice from the Chief of Ordnance or the order of a court of competent jurisdiction directing it to refrain from permitting withdrawals by the Contractor. The Contracting Officer shall at all times be afforded proper facilities for inspection and audit of such special bank account or accounts.

5. The Contractor may pay to any third party for services in advance or pay for materials or supplies in advance of delivery at the site of the work or at an approved storage site, any of the sums previously advanced to it by the Government under the provisions of this contract, with the prior written approval of the Contracting Officer.

[fol. 70]

Title VI

Termination

Article VI-A—Termination by Government

1. The Government may terminate this contract at any time by a notice in writing from the Contracting Officer to the Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with performance of this contract and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders and subcontracts are chargeable to this contract.

2. If this contract is terminated for the fault of the Contractor, the Contracting Officer may enter upon the premises and take possession, for the purpose of completing the work contemplated by this contract, of any or all materials, tools, machinery, equipment, and appliances which may be owned by or in the possession of the Contractor, and all options, privileges, and rights, and may complete, or employ any other person or persons to complete, said work. Following such termination rental shall be paid to the Contractor for such construction plant or parts thereof as he may own, and which the Government

may retain at rates prescribed in Section 2 of Article V-A of Title V.

3. Upon the termination of this contract, full and complete settlement of all claims of the Contractor arising out of this contract shall be made as follows:

a. The Government shall assume and become liable for all obligations, commitments, and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with said work and the cost of which would be reimbursable in accordance with the provisions of this contract; and the Contractor shall, as a condition of receiving the payments mentioned in this Title, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government the rights and benefits of the Contractor under such obligations or commitments.

b. The Government shall reimburse the Contractor for all expenditures made in accordance with Title V and not previously reimbursed.

[fol. 71] c. The Government shall reimburse the Contractor for such further expenditures, made after the date of termination, for the protection of Government property and for accounting services in connection with the settlement of this contract as are required or approved by the Contracting Officer.

d. The Government shall pay to the Contractor any unpaid balance for the rental of the Contractor's equipment in accordance with Title V to the date of termination.

e. If the contract is terminated for the convenience of the Government, the Contractor will be paid all fees which have accrued at the date of termination, less fee payments previously made. If the contract is terminated due to fault of the Contractor, no additional payment on account of the fixed fees will be made.

f. The obligation of the Government to make any of the payments required by this Title, shall be subject to any unsettled claims for labor or material or any claims which the Government may have against the Contractor.

4. Prior to final settlement the Contractor shall, if required furnish a release as required in Section 5 of Article V-B of Title V hereof.

[fol. 72]

Title VII.

General.

Articles VII-A—Responsibility Of Contractor.

It is the understanding of the parties hereto, and the intention of this contract, that all work under Title IV of this contract is to be performed at the expense of the Government and that the Government shall hold the Contractor harmless against any loss, expense (including expense of litigation), or damage (including liability to third persons because of death, bodily injury or property injury or destruction or otherwise) of any kind whatsoever arising out of or in connection with the performance of the work under such Title IV of this contract, except to the extent that such loss, expense, damage or liability is due to the personal failure on the part of the corporate officers of the Contractor, or of other representatives of the Contractor having supervision or direction of the operation of the Plant as a whole, to exercise good faith or that degree of care which they normally exercise in the conduct of the Contractor's business.

Article VII-B—Contingencies.

If the performance of any work under this contract is interrupted or prevented by reason of inability to obtain essential materials to be used in the performance of this contract, or by reason of labor shortage or labor disputes, from whatever cause arising, and whether or not the demands of the employees involved shall be reasonable and within the Contractor's power to concede, or by reason of fire, explosion, or accident, sabotage or any cause beyond its control, whether of a similar or dissimilar nature, the Contractor shall be excused from performing said work while or to the extent that it is prevented from so doing by one or more of such causes and all such work shall be performed as soon as practicable after such disability is removed. It is further understood and agreed that the Contractor shall be liable for any failure or delays in the per-

formance of Title IV of this contract, and accountable for the loss or destruction of or damage to any materials, tools, machinery, equipment, supplies, semi-finished or finished products or other property or materials located or stored at said Plant or used in connection with the operation thereof, if, and only if and to the extent that, the same is due to the personal failure on the part of the corporate officers of the Contractor, or of other representatives of the Contractor having supervision or direction of the operation of the Plant as a whole, to exercise good faith or that degree of care which they normally exercise in the conduct of the Contractor's business.

Article VII-C—Changes.

In connection with the work under Titles II, III and IV, the Contracting Officer may at any time after consultation with the Contractor, by a written order and without notice to the sureties, make changes in or additions to the drawings [fol. 73] and specifications, issue additional instructions, require additional work, or direct the omission of work covered by such Titles II, III and IV. If such changes cause a material increase or decrease in the amount or character of the work to be done under such Titles, or in the time required for its performance, an equitable adjustment of the amount of the fixed-fees to be paid to the Contractor shall be made and the contract shall be modified in writing accordingly: Provided, however, that there shall be no adjustment in the amount of the fixed-fees as provided herein nor shall there be any claim for increased compensation because of any errors and/or omissions made in computing the original estimates of cost hereunder or where the estimated costs vary from the actual costs. Any claim for adjustment under this Article must be asserted within ten (10) days from the date the change is ordered: Provided, however, that the Contracting Officer, if he determines that the facts justify such action, may receive and consider; and with the approval of the Chief of Branch, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Article VII-X hereof, but nothing provided in this Article shall excuse

the Contractor from proceeding with the prosecution of the work so changed.

Article VII-D—Title.

The title to all work, completed or in the course of construction, preparation or manufacture shall be in the Government. Likewise, upon delivery at the site of the work, at an approved storage site or other place approved by the Contracting Officer and upon inspection and acceptance in writing by the Contracting Officer, title to all materials, tools, machinery, equipment and supplies, for which the Contractor shall be entitled to be reimbursed under Title V hereof shall vest in the Government. These provisions as to title being vested in the Government shall not operate to relieve the Contractor from any duties imposed under the terms of this contract.

Article VII-E—Materials And Workmanship.

1. The work shall be executed in the best and most workmanlike manner by qualified, careful, and efficient workers, insofar as they are available, in strict conformity with the best standard practices.

2. Except it be otherwise authorized by the Contracting Officer, all materials shall be of the best quality of their respective kinds. If the Contracting Officer requires that the Contractor submit for prior approval samples of materials proposed for use in the work covered by this contract, the Contractor shall make no commitments for such materials until the submitted samples have been approved by the Contracting Officer.

Articles VII-F—Records And Accounts—Inspection And Audit.

1. The Contractor agrees to keep records and books of [fol. 74] account, on a recognized cost-accounting basis, showing the actual cost to it of all items of labor, materials, equipment, supplies, services, and other expenditures of whatever nature for which reimbursement is authorized under the provisions of this contract. The system of accounting to be employed by the Contractor shall be such as is satisfactory to the Contracting Officer.

2. The Contracting Officer shall at all times be afforded proper facilities for inspection of the work and of the special bank account or accounts provided for in Article V-C hereof, and shall at all times have access to the premises, work, and materials, to all books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description of the Contractor pertaining to said work; and the Contractor shall, except such original documents as are submitted in support of reimbursement vouchers, preserve for a period of 3 years after completion or termination of this contract, all the books, records, and other papers herein mentioned.

3. Any duly authorized representative of the Contractor shall be accorded the privilege of examining the books, records, and papers of the Contracting Officer relating to the cost of the work for the purpose of verifying such cost.

4. In connection with the work under Title I of this contract the Contracting Officer shall have the right to decide which functions of checking and auditing are to be performed exclusively by the Government and to prescribe procedures to be followed by the Contractor in such accounting, checking and auditing functions as he may continue to perform. The employment and number of personnel to be engaged by the Contractor under such Title I for checking, auditing, and accounting work shall be subject to the approval of the Contracting Officer and if, in the opinion of the Contracting Officer, the number of employees engaged in checking, auditing and accounting work is excessive, the Contractor shall make such reductions in force as the Contracting Officer deems necessary.

Article VII-G—Special Requirements.

The Contractor hereby agrees that it will:

1. Procure and thereafter maintain such bonds and insurance in such forms and in such amounts and for such periods of time as the Contracting Officer may approved or require in writing.

2. Procure all necessary permits and licenses; obey and abide by all applicable laws, regulations and ordinances and other rules of the United States of America, of the

state, territory, or subdivision thereof wherein the work is done, or of any other duly constituted public authority.

3. Unless this provision is waived in writing by the Contracting Officer, reduce to writing every contract in excess of Two Thousand Dollars (\$2,000.00) made by it for the purpose of the work hereunder for services (except [fol. 75] contracts of employment), materials, supplies, machinery, or equipment, or for the use thereof; insert therein a provision that such contract is assignable to the Government; make all such contracts in its own name, and not bind or purport to bind the Government or the Contracting Officer thereunder. No purchases in excess of Five Hundred Dollars (\$500.00) shall be made or placed without the approval of the Contracting Officer.

4. Enter into no subcontract for any portion of the work without the written approval of the Contracting Officer. Subcontracts are defined as contracts entered into by the Contractor with others which involve the performance, wholly or in part, at the site of the work, of some part of the work described in Titles I and II hereof, and if the subcontract covers any portion of the design or construction work under this contract, the subcontract shall be entered into only in a form prescribed by The Quartermaster General.

5. At all times during the progress of the work keep at the site thereof a duly appointed and qualified representative who shall receive and execute on the part of the Contractor such notices, directions, and instructions as the Contracting Officer may give under the terms of this contract.

6. The Contracting Officer may require the Contractor to dismiss from the work any employee the Contracting Officer deems incompetent or whose retention is deemed to be not in the public interest, subject however to appeal under the provisions of Article VII X for reinstatement of such employee.

7. Furnish as required by the Contracting Officer for use in connection with the work, those items of construction equipment and or machinery listed in the record of negotiations as mentioned in Section 2 of Article V A of

Title V, provided that such pieces of equipment and or machinery shall be furnished, if required, within ten (10) days of the date on which such pieces of equipment and or machinery are stated to be available. In the event that the Contractor fails to furnish any piece of equipment and or machinery in accordance with the terms of this provision after the Contracting Officer has required the furnishing of such piece of equipment and or machinery the additional cost of obtaining such equipment and or machinery from any source other than the Contractor shall be paid by the Contractor and shall not be a reimbursable expenditure.

8. At all times use its best efforts in all acts hereunder to protect and subserve the interest of the Government.

Article VII-II—Preference For Domestic Articles.

In the performance of the work covered by this contract the Contractor, subcontractors, material men or suppliers, shall use only such unmanufactured articles, materials and supplies as have been mined or produced in the United States, and only such manufactured articles, materials and supplies as have been manufactured in the United States substantially all from articles, materials or supplies mined, [fol. 76] produced or manufactured, as the case may be, in the United States. The foregoing provision shall not apply to such articles, materials or supplies of the class or kind to be used or such articles, materials or supplies from which they are manufactured, as are not mined, produced or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or to such articles, materials or supplies, as may be excepted by the Secretary of War under the proviso of Title III, Section 3, of the Act of March 3, 1933: 47 Stat. 1520 (41 U.S.C. 106).

Article VII-I—Convict Labor.

The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

Article VII-J—Workmen's Compensation Laws.

During the life of this contract the Contractor will provide and maintain for all employees of the Contractor engaged in work under this contract, Workmen's Compensation

tion Insurance or such other protection for employees as may be required by Federal or State statutes in the jurisdiction in which such work is performed, under direction of the Contracting Officer. If the whole or any part of the work under this contract is sublet on a Fixed Fee basis, the same protection provided for employees of the Contractor will be provided for the protection of the employees of the subcontractors. In those cases where the whole or any part of the work under this contract is sublet on a Lump-Sum basis, the Contractor will require the subcontractors to maintain for their employees Workmen's Compensation Insurance or such other protection for employees as may be required by Federal or State statutes in the jurisdiction in which such work is performed. Prior to commencement of operations under this contract, the Contractor will supply the Contracting Officer with proof of compliance with this Article.

Article VII K. Accident Prevention.

In order to protect the life and health of his employees in the performance of Title I of this contract, the Contractor will comply with all pertinent provisions of the "Safety Requirements For Excavation, Building And Construction, Construction Division, O.Q.M.G.", approved by the Chief of the Construction Division, March 1, 1941, and of the specifications, and will take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for this purpose. The Contractor will maintain an accurate record of, and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, all cases of death, occupational disease, and traumatic injury arising out of or in the course of employment on work under this contract.

Article VII L. Officials Not To Benefit.

No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, (fol. 77) but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Article VII M—Covenant Against Contingent Fees.

The Contractor warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to terminate the contract, or in its discretion, to deduct from payments due the Contractor the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable by Contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

Article VII N—Disputes.

All disputes concerning questions of fact arising under this contract shall be decided by the Contracting Officer, subject to written appeal by the Contractor within 30 days to the Chief of Branch concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto; when the amount involved is \$50,000.00 or less. When the amount involved is more than \$50,000.00, or when the dispute arises under Section 6 of Article VII G; or where no specific amount is involved, the decision of the Chief of Branch shall be subject to written appeal within 30 days by the Contractor to the Secretary of War or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. In the meantime the Contractor shall diligently proceed with the work as directed.

Article VII O—Contractor's Organization And Methods.

Within a reasonable time after the execution of this contract the Contractor shall submit to the Contracting Officer a chart showing the executive and administrative personnel to be regularly assigned for full or part time service in connection with the work under this contract, together with a written statement of their duties and the administrative procedure to be followed by the Contractor for the control and direction of the work; and the data so furnished shall be supplemented as additional pertinent data become available. There shall also be submitted to the Contracting Of-

flier by the Contractor charts of the various field organizations showing all personnel, other than artisans, mechanics, helpers, and laborers to be assigned for full or part time service outside of the central office organization, together with a written statement of their duties and rates of pay and the procedure proposed to be followed by the Contractor for the accomplishment of all field work, including temporary requirements; and the data so furnished shall be supplemented as additional pertinent data become available. Statements of procedure shall include purchasing, disbursing, accounting, transportation, storage, employment, housing, sanitation, subsistence, recreation and similar essential activities and methods.

Article VII P - Assignment Of Claims.

Neither this contract, nor any interest therein, shall be [fol. 78] assigned or transferred by the Contractor to any other party or parties.

Article VII Q - Loading And Unloading Railway Cars.

The Contractor shall load promptly all railroad cars furnished for loading upon his order and shall unload from railroad cars promptly upon arrival all shipments consigned to him and shall provide storage facilities and other facilities necessary for these purposes; and the Contractor shall not order railway cars for loading unless they can be loaded promptly and shall not cause or permit shipments to be consigned to him unless they can be unloaded from railroad cars promptly upon arrival.

Article VII R - Notice To Government Of Labor Disputes.

Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of Title I of this contract, the Contractor will immediately give notice thereof to the Chief of the Construction Division, O.Q.M.G. Such notice shall include all relevant information with respect to such dispute.

Article VII S - Approval Required.

This contract shall be subject to the written approval of the Secretary of War and shall not be binding until so approved.

Article VII T Statutory Provisions.

It is understood that the respective undertakings to conform to the requirements of the several statutes hereinbefore referred to shall be operative only so long as and to the extent that such statutory requirements are applicable hereunder.

Article VII U Definitions.

1. The term "Chief of Branch" refers to the Chief of Ordnance or The Quartermaster General.

2. The terms "Secretary of War" or "Chief of Branch" shall include their duly authorized representatives as the case may be other than the Contracting Officer.

3. For the original signing of this contract, the term "Contracting Officer" as used herein shall be deemed to include the Contracting Officer appointed by The Quartermaster General and the Contracting Officer appointed by the Chief of Ordnance.

4. The term "Contracting Officer" when used in connection with the supervision of performance of construction work of the entire project, and in connection with the supervision of preparation of detailed plans and working drawings for roads, railroads, sewage systems, water systems, electrical generating plants and transmission lines, [fol. 79] heating plants, nonmanufacturing buildings, such as offices, general warehouses and garages, and such miscellaneous construction as may be requested by the Chief of Ordnance, refers to the Contracting Officer appointed by The Quartermaster General, his successor or duly authorized representative; and when used in connection with any other phase of the work to be performed under this contract it refers to the Contracting Officer appointed by the Chief of Ordnance, his successor or duly authorized representative.

Article VII V Racial Discrimination.

The Contractor, in performing the work required by this contract, shall not discriminate against any worker because of race, creed, color or national origin.

Article VII W - Alterations

The following alterations were made in this contract before it was signed by the parties hereto:

On page 5 at the end of paragraph 3, Article I B of Title I add the following: P.G.

There shall be no adjustment in the amount of the fixed fees as provided herein nor shall there be any claims for increased compensation because of any errors and omissions made in computing the original estimates of cost hereunder, or where the estimated costs vary from the actual costs. P.G.

On page 5, paragraph 2 of Article I C of Title I delete the following words: P.G.

the Contractor does not guarantee, sub
stituting therefore the words: P.G.

neither the Government nor the Contractor guarantees. P.G.

On page 13, Article II B of Title II delete the following words:

the Contractor does not guarantee, sub
stituting therefore the words: P.G.

neither the Government nor the Contractor guarantees. P.G.

On page 15, Article III B of Title III delete the following words:

the Contractor does not guarantee, sub
stituting therefore the words: P.G.

neither the Government nor the Contractor guarantees. P.G.

On page 19, Article IV B of Title IV delete the following words:

the Contractor does not guarantee, sub
stituting therefore the words:

neither the Government nor the Contractor guarantees. P.G.

[fol. 80] In Witness Whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

THE UNITED STATES
OF AMERICA.

Approval Recommended:

July 16, 1941.

C. M. Wesson.

Major General.

Chief of Ordnance.

By L. H. Campbell, Jr.,

Brig. Gen., U. S. Army.

(Contracting Officer appointed by Chief of Ordnance)

By Homer W. Jones.

Lieut. Col., J.A.G.D.

(Contracting Officer appointed by The Quartermaster General)

Approval Recommended:

July 18, 1941.

E. B. Gregory.

Major General.

The Quartermaster General.

FORD, BACON & DAVIS,
INCORPORATED.

(Contractor)

Two Witnesses as to
Execution by the Contractor:

By Page Golsan, Vice Pres.
39 Broadway, New York,
N. Y.

(Business Address)

Shipley Thomas.

39 Broadway, New York,

N. Y.

(Address)

Approved July 19, 1941:

By direction of the Secretary
of War.

Frances E. Keyes.

Washington, D. C.

(Address)

ROBERT P. PATTERSON.

Under Secretary of War.

[fol. 81] I, _____, certify that I am the _____ Secretary of the corporation named as Contractor herein; that Page Golsan who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of

its governing body, and is within the scope of its corporate powers.

(Corporate Seal)

HENRY F. STORCK,

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, Page Golsan who signed this contract for the Ford, Bacon & Davis, Incorporated had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

L. H. CAMPBELL, JR.,

Brig. Gen., U. S. Army.

W-Ord-519

DA-W-Ord 6

(fol. 82)

Exhibit No. 2

Ford, Bacon & Davis, Inc.
Arkansas Ordnance Plant
Little Rock, Arkansas

Statement Of Production Costs

As of May 10, 1946

Contractor's Expenditures

501	Gross Payrolls	\$ 65,186,577 61	
502	F.O.A.B. Taxes (Employer's Portion)	\$43,360 48	
503	Arkansas Unemployment Compensation Tax	1,737,048 67	
504	Workmen's Compensation Insurance	1,461,570 62	
505	Federal Excise Tax:	\$93,004 84	
506	Group Life & Hospital Insurance (Employer's Portion)	179,477 00	
507	Purchased Direct Materials	9,574,602 34	
508	Indirect Materials & Supplies	5,920,835 10	15,495,437 44
509	Other Operating Expense	809,246 14	
551	Revenues Credited to Operating Cost	1,434,864 75 Cr	
552	Discount Taken	53,556 30 Cr	

Total Contractor's Disbursement
Reimbursements

\$ 84,220,304 78

Government Expenditures

Direct Materials, Government
Supplied, Free Issue

(Estimate) \$275,798,000 00

520 Direct Government Expenditures, Expenditure Order No. 3 655,021 04

508 Indirect Materials, Government Furnished 86,354 24

6-13,660

553	1044 Voucher Credits - Sale of Services	39,792 08 Cr.	
521	Local Ordnance Administrative Expense - Salaries & Wages	1,727,191 83	
522	Contractor's Fixed Fee Paid	1,517,333 32	
	Total Government Expenditures,*†		\$279,714,918 32
533	Rework of Components	39,792 81 Cr.	
533A	Rework of Packing Materials	185,741 16 Cr.	
531	Construction Cost Charged Operations in Error	3 38 Cr.	
620	Materials, Supplies & Services Furnished to the Government	932 73 Cr.	
536	Materials Manufactured for Inventory	120,971 96 Cr.	
550	Total Credits		\$ 347,442 04 Cr.
	Total Operating Costs		\$363,586,878 06
	Credits To Operating Costs		
530	Project Charges to Capital Expense	179,716 78 Cr.	
531	Project Charges to Other Procurement Authorities	604,399 84 Cr.	
550	Total Credits to Operating Costs		784,116 62 Cr.
	Total Net Production Costs		\$362,802,761 44

* Disbursement of Government funds by Contractor, reimbursed by Government.

[fol. 83] ** Direct expenditure by Government applicable to plant operations.

Prepared by: Frank W. Smith,
Accountant.

Approved by: W. F. Whittle,
Paymaster.

Auditor Certification.

The attached statement, prepared from Contractor's Accounting Records and fiscal statements submitted to the U. S. Army Ordnance Department for Government control, in accordance with Ordnance Procurement Instructions, has been audited and verified and to the best of my knowledge is true and correct.

W. F. WEAVER, Auditor.
U. S. Army Ordnance Department.

acknowledge receipt of your inquiry as to this department with reference to the collection of gasoline taxes for use in regard to construction work performed by the federal government on cost plus contracts. You referred to a letter by the Honorable Francis Biddle, acting Attorney General, to the Chairman of the Committee on Uniform Sales Tax of the National Association of Tax Administrators.

I am glad to inform you that the ruling of this department for some time has been gasoline taxes, as well as sales taxes, are not to be collected on the sales of gasoline and other materials and supplies which actually are used in the construction of projects by the federal government where the contractor purchasing such gasoline and/or supplies acts as agent for the federal government or its instrumentalities; and it has been the construction of the department that the contractor does in fact act as agent for the federal government with reference to such project or projects is one commonly referred to as a cost plus fixed fee contract.

However, we wish to point out that this exemption does not extend to any commodity or equipment purchased by the contractor which are necessary to the performance of his contract but which are not considered by the government as a part of the cost in computing the fee to be paid to the contractor upon the completion of any work. For example, gasoline used by the contractor in going to and from the place where the work is to be performed, or equipment which the contractor may be required to have in order to perform the contract, such as a tractor, the cost of which is not figured as a part of the cost in computing the fee to be paid the contractor but upon which the government may pay to the contractor a fee based upon the rental thereof.

There are many other illustrations which might be made of materials and supplies which are bought by the contractor operating on a cost plus fixed fee basis upon which purchases the tax would be due, but suffice it to say that the general rule of this department is that as to all materials and supplies actually purchased by the contractor on behalf of the government, and for which he is reimbursed by the government and the cost of which is considered as a part of the cost in computing the fee to be paid the contractor, would not be subject to the tax.

Yours very truly,

JOE HARDIN
COMMISSIONER OF REVENUES

LG/p
June 21, 1941

Leffel Gentry,
Attorney

d. A fire marshall will be appointed by the commanding officer at all ordnance establishments. He should be responsible for the proper functioning of the fire-fighting organization of the establishment. He should conduct inspections to insure that all fire-fighting equipment is in proper condition, and that the fire-fighting organization functions properly. Under the commanding officer he normally should be the head of the fire-fighting organization.

e. Trained employees who have positions of authority and responsibility should be held responsible not only for the specific duties of their position but also for the enforcement of regulations and for vigilance in detecting any dangerous conditions or practices within their purview and for reporting same to their immediate superiors.

7. General safety regulations.—a. The following general safety regulations will be enforced at all ordnance establishments:

(1) Aisles and exits.—During operating hours, aisles and safety exits will not be blocked, and doors must not be fastened with any locks other than antipanic catches, or other quickacting fastening devices.

(2) Authorized entry.—(a) No unauthorized person will be permitted to enter or remain in any magazine or explosive area.

(b) Employees will be allowed in explosive buildings only at such times as required by their duties. They will be required to enter and leave the explosives area at designated points.

(3) Clothing.—Clothing not worn during working hours will be placed in designated locations only.

(7) Fire drills.—All employees working in combustible buildings, in hazardous locations, or buildings containing inflammables are required to participate in such fire drills as may be prescribed by local authorities. A siren or similar device will be installed at each ordnance establishment to warn all employees in the event of fire.

[fol. 93] (11) First-aid kits.—First aid kits will be made available at all locations, where explosives are manufactured, loaded, stored, shipped, or handled.

(13) Forbidden objects.—Employees who are required to wear special clothing must not carry keys, coins, knives, or any other foreign object of any kind during the time they are in operating buildings.

(14) Guards.—Explosives areas will be guarded adequately at all times.

(18) Laundering.—(a) Laundering of special clothing will be done at the plant under the supervision of plant authorities.

(b) Uniforms and special clothing will be laundered according to schedules based on the toxicity of the material in which they are used.

(23) Machinery.—(a) Daily on beginning work employees must inspect the machinery under their charge. Employees will be responsible for the safe operation of their machines.

(25) Matches.—No person will be allowed to take matches, lighters, or other fire, flame, or spark-producing devices into any magazine area or explosives area except by written authority of the commanding officer.

(29) Personnel.—All applicants for employment must be given mental and physical examinations. The commanding officer will be responsible for the character of the personnel employed. Care will be taken that no mentally unsound persons are engaged, and that all nondisqualifying physical defects are entered in the record of physical examination.

[fol. 85]

Exhibit No. 3.

Excerpts From Ordnance Procurement
Instructions

50,001.1 New Ordnance Facility.—The term "New Ordnance Facility" means a Government-owned, contractor-operated plant under the jurisdiction of the Ordnance Department.

* * *

50,002.1 In the case of new Ordnance facilities and contractor-operated Field Service depots, the contracting officer's representative appointed by the contracting officer administering the operating contract will also be appointed the commanding officer of the station. Since the station is a Class IV installation under AR 170-10 as amended, he will be guided by the provisions of pertinent Army Regulations.

* * *

50,105-2 In the administration of cost-plus-a-fixed-fee contracts under which the contracting officer has authority to designate the point at which title will pass to the Government, the contracting officer, in accordance with PR 1182-C, will direct the contractor to cause delivery to be taken by the Government and title to materials and supplies to vest in the Government at the point of origin, subject to final inspection and acceptance at destination. Such power will be exercised unless savings will not be realized thereby under all the circumstances or unless, in the judgment of the contracting officer, such action will definitely, demonstrably and materially interfere with or delay performance of the contract in view of the administrative or other difficulties involved.

* * *

53,005.1 Reference is made to ASF Manual M404, AR 55-155 and AR 55-150. Government bills of lading on outbound shipments must be signed either by the transportation officer issuing such bills of lading or by his designated civilian assistant who must be an employee of the War Department. At CPFF establishments it is recommended that the preparation of Government bills of lading be made by

(39) Safety shoes.—(a) Explosives operator's safety shoes will be worn in all explosives areas when required by this manual.

(b) Before an employee enters any magazine or building in which explosives are stored or processed, shoes will be cleaned carefully of all mud, grit or other foreign material.

(41) Searches.—Frequent searches will be made for forbidden articles. These searches should include all personal property.

(42) Smoking.—(a) Smoking will be prohibited in buildings or in the vicinity of buildings containing explosives, ammunition, or other hazardous material. Smoking areas will be designated and strictly regulated by the commanding officer.

(b) Smoking in clothing which has been contaminated by explosives is prohibited.

[fol. 94] (c) Areas designated by the commanding officer for smoking will be furnished with electric lighters only. Matches and portable lighters will be prohibited.

(45)* (b) All employees will be supplied with extracts of the important regulations and essential rules concerning the station, preferably arranged in the form of a small booklet. These regulations should include not only general regulations but specific regulations which apply to the particular establishment.

The manual contains other detailed instructions covering the following subjects:

Section III—Fire Protection.

Section IV—Storage, Magazines and Magazine Areas.

Section V—Quantity—Distance Tables outlining the quantity-distance requirements which are applicable to the storage and handling of ammunition and explosives and

the contractor for the signature of the transportation officer or his designated assistant.

53009.1 On all contracts it will be the responsibility of the establishment administering the prime contract to designate an Accountable Property Officer within their organization to be accountable for all property in connection with that contract.

53,103.2 In every case where reimbursement is made on the basis of a direct charge to a CPFF contract, including any property contained in the overhead account which is specifically identified with a CPFF contract and wholly allocated thereto, the title to the property is in the Government and property accountability therefor should be established.

57,100.3 Commanding Officer's responsibility.—Government-owned contractor-operated plants are military reservations. Commanding officers appointed by War Department orders are responsible for the safety of all personnel and Government property. The following is an extract from AR 210-10:

4. * * * b. He will be responsible for

(1) The safety and defense of the post. * * *

[fol. 86] (4) The reservation, proper application, and use of public property.

(5) The strict enforcement of laws and regulations. * * *

(9) The guarding of the public interests in every particular.

It is, therefore, important that all commanding officers issue regulations that will insure the maximum protection to all personnel and to Government property in any event. These general regulations should be cooperatively issued by the contractor and the commanding officer. The commercial safety experience is ordinarily with the contractor and the

with which all ordnance establishments were required to comply.

Section VI—Mandatory requirements concerning packing, marking, and shipping of military supplies.

Section VII—Surveillance, Inspection of Smokeless Powder and Maintenance, Salvage and Destruction of Explosives and Ammunition.

Pertinent provisions of Section VII follow:

"c. The Chief of Ordnance exercises general supervision over the surveillance of all explosives and ammunition in storage and service; prescribes the tests, technical methods of inspections to be made; and maintains records of the condition of all lots in service and storage.

"d. The commanding officer of an ordnance establishment is responsible to the Chief of Ordnance that all ammunition and explosives at his establishment are subjected to proper surveillance; that the results of surveillance tests and inspections are promptly reported; that the Chief of Ordnance has a record by lot number of the condition of all ammunition and explosives on hand.

"e. Ammunition inspectors are personnel trained in the surveillance of explosives and ammunition. They are appointed and assigned by the Chief of Ordnance, but are under the control and supervision of the commanding officer.

"61. Maintenance.—* * *

"b. Some of the more common reconditioning operations such as resealing boxes and containers and replacing gaskets may be accomplished in routine operations. Repainting, re-marking, and repacking will be done in accordance with specific instructions from the Chief of Ordnance.

"c. The renovation of a lot of explosives or ammunition will not be undertaken except in accordance with the specific directions of the Chief of Ordnance. The work usually involves the use of special equipment and

military responsibility is in the commanding officer. The enforcement of these rules is discussed in OPI 57,002.

* * * *

57,200.7 Jurisdictional status of Ordnance establishments. —The Office of the Chief of Engineers reports that the Federal Government has attained exclusive jurisdiction in certain establishments over which the Chief of Ordnance has retained responsibility in plant protection matters. The following list will be amended from time to time as jurisdiction is obtained at additional plants. Inquiry as to the present jurisdictional status of establishments not listed hereafter may be addressed to Safety and Security Branch, Washington Liaison Office, Attention of Legal Unit, Office of the Chief of Ordnance, Washington, D. C.

Name

Exclusive
Jurisdiction

* * * *

Arkansas Ordnance Plant 9-10-42

* * * *

8,405.2 An exemption is authorized from the tax imposed by Section 3475 of the Internal Revenue Code (26 U.S.C. 3475) as to the payment for transportation of property to or from the Government of the United States shipped on a United States Government bill of lading. (Order of the Secretary of Treasury dated 29 April 1944, Federal Register 2 May 1944, Vol. 9, No. 87, F. R. Doc. 44-6128.)

8,405.3 Contracting officers, in administering cost-plus-a-fixed-fee contracts, are not, for the sole purpose of avoiding the payment of the Federal transportation tax, to arrange for the transportation of property upon the United States Government bill of lading. It should be noted in this connection that the payment of the transportation tax by a cost-plus-a-fixed-fee contractor and a subsequent reimbursement of the contractor by the Government merely transfers funds from one Government agency to another.

* * * *

8500—Exempts sales to prime contractors from federal excise taxes.

methods, and requires close supervision to maintain adequate standards of safety as well as to assure the desired quality of workmanship.

* * *

“62. Salvage.—”

“b. Salvage operations are conducted in accordance with specific instructions from the Chief of Ordnance.

* * *

“64. Destruction of explosives and ammunition.—”

“b. Destruction will not be undertaken without prior approval of the Chief of Ordnance in each case, except that commanding officers may order the immediate destruction of dangerously deteriorated explosives or ammunition when in their opinion such action is necessary to protect life or property. When destruction is authorized, the provisions of Army Regulations 356640, Lost, Destroyed, Damaged, or Unserviceable Property, will be observed.”

Part II. Special regulations for handling and storing specific kinds of military explosives and ammunition, together with brief descriptions of the properties and uses of the more important items.

Part III. Special safety regulations for the manufacture and loading of military explosives and ammunition.

Part IV. Special safety regulations for the storage and handling of chemical ammunition.

[fol. 96]

Exhibit 5.

Jacksonville, Arkansas

August 10, 1943

Subject: Request to Employ Janitors Above the Minimum Rate.

To: Commanding Officer
Arkansas Ordnance Plant
Jacksonville, Arkansas

We are experiencing difficulty in employing janitors and janitresses at the minimum established rate in accordance

with our existing wage policy. The rate range for these positions is as follows:

Code No.			Rate Range Per Hour				
415	Janitor	NS-FL	\$	40	43	47	51 55
421	Janitress	NS-FL		40	43	47	51 55

Listed below is the total number of employees in these two classifications at the various steps in the wage bracket:

Rate Per Hour	Number of Employees Classified as Janitor or Janitress
\$.40	40
.43	35
.47	59
.51	80
.55	3

(*Will be transferred to do crating work.)

It is not possible at this time to employ good janitors at the minimum rate of \$.40 per hour. We request permission to employ janitors and janitresses at the rate of \$.47 per hour which we believe will enable us to secure a more efficient class of qualified employees at a rate comparable to that now being paid by other industries in this locality.

The turnover of the janitor personnel has been high. In order to retain the services of the competent janitors now on the payroll, and to equalize the rates of pay, permission is requested to increase the rate of those janitors and janitresses now on the payroll at the rates of \$.40, \$.43 and \$.47 per hour in accordance with the following:

[fol. 97] A. Increase to \$.51 per hour those who have been continuously employed for 90 days or longer.

B. Increase to \$.47 per hour those janitors and janitresses now employed at this Plant and who are on the \$.40 and \$.43 rate and who have not been continuously employed here as long as ninety days.

Your early action on these requests is earnestly solicited.

B. E. HARRIS,
General Manager.

BEH:m

cc: Mr. C. H. Harper, Jr.

PURCHASE ORDER

ARKANSAS ORDNANCE PLANT
JACKSONVILLE, ARKANSAS
POSTOFFICE: LITTLE ROCK, ARK.

The order number must appear on all invoices, correspondence, shipping papers and on exterior of packages. Shipping tickets must accompany all shipments.

Nº 27134

Operator: **FORD, BACON & DAVIS, INC.**

Requisition No.

Contract No. W-ORD-519; DA-W-ORD-6

Date _____

194

Terms

To

Shipped Via

Address

F.O.B.

In accordance with terms and conditions of your accepted bid and/or contract dated _____ and in conformity with conditions and instructions appearing on reverse side hereof, kindly enter order as specified below.

[illegible]

**SHIP TO: Ordnance Property Officer
Jacksonville, Arkansas**

For Account of Operator: Ford, Bacon & Davis, Inc.

Prepare invoices in name of operator and MAIL DIRECT to
Ford, Bacon & Davis, Inc., Arkansas Ordnance Plant, Little Rock, Ark.

FORD, BACON & DAVIS, INC.
OPERATOR

Shipment must start by:

And be completed by:

Procurement Authority No.

PURCHASING AGENT

Entered on Purchase Order Register by

Approved:

FOR THE COMMANDING OFFICER

Purchase Approved Because:

1—Lowest Price

4—Better or required design

2—Early Delivery

5—Only Available Source

3—Better Quality

8

EXHIBIT 3A

[fol. 98]

War Department
Arkansas Ordnance Plant
Jacksonville, Arkansas

Prowler/ab

Attention of
SPOCQ

27 Aug 1943.

Subject: Increase in Rate for Existing Designation.
WD-WAA-1 Facility Submission No. Arkansas—8

To: Office, Chief of Ordnance,
Pentagon Building,
Washington, D. C.
ATT'N: SPOGC—Chief, Labor Section.

1. In accordance with Ordnance Procurement Instructions 9,109, forwarded herewith is the complete information as provided for under 9,108.2, relative to request of Ford, Bacon & Davis, Inc., Contractor-Operator, this Plant, to employ janitors above the existing minimum rate, which submittal has been reviewed and meets with the approval of the Commanding Officer.

2. It is requested that the foregoing be examined by his office and forwarded to the War Department Wage Administration Agency, for approval, and that this office be advised as soon as practicable.

LINCOLN W. FENSTERMACHER,
Major, Ordnance Dep't.,
Commanding

Encl:
Request of FB&D—8/24/43,
w/supp. documents (in Quint.)

COPY
File No. AOP 248.3/19893

[fol. 88]

Exhibit 3b.

War Department
Arkansas Ordnance Plant
Jacksonville, Arkansas

Memorandum)

No. 113)

December 2, 1942.

Subject: Primary and Additional Assignments of Officers
at Arkansas Ordnance Plant.

1. For the information and guidance of all concerned, listed below is a roster of the officers assigned to this station, with a summary of their primary and additional assignments.

a. Lieutenant Colonel Robert A. Kohloss, jr., O-396691,
Ordnance Department—

Primary duty Commanding Officer, W.D. S.O. No. 145,
Par. 10, dated June 2, 1942.

b. Major Lincoln W. Fenstermacher, S-898, A. S. C.—

Primary duty Administrative Officer, A.O.P. G.O. No. 33, par. 2, dated October 15, 1942.

Additional duty Property Officer, A.O.P. G.O. No. 37, par. 3, dated November 4, 1942.

Additional duty Transportation Officer, A.O.P. G.O. No. 37, par. 3, dated November 4, 1942.

Additional duty Representative for Administering Contracts (with Capt. Radcliffe), A.O.P. G.O. No. 41, par. 2, dated November 10, 1942.

c. Captain Melvin Johnson, O-297160, Ordnance Department—

Primary duty Chief, Production Service Section, A.O.P. S.O. No. 566, par. 2, dated July 9, 1942.

Additional duty Salvage Officer, A.O.P. G.O. No. 50, par. 1, dated November 30, 1942.

Additional duty Equipment Budget Officer, A.O.P. G.O. No. 50, par. 1, dated November 30, 1942.

[fol. 99]

War Department
Arkansas Ordnance Plant
Little Rock, Arkansas

Prowler/ab

16 October 1943.

Subject Increase in Rate for Existing Designation.
WD-WAA-1 Facility Submission No. Arkansas—8.

To: Mr. B. E. Harris, General Manager,
Arkansas Ordnance Plant.

1. Reference is made to the General Manager's memorandum, dated 24 August 1943, wherein the Contractor submitted request to employ janitors above the existing minimum rate, for transmittal to the Office, Chief of Ordnance.

2. This office is in receipt of teletype from Office, Chief of Ordnance, dated 16 October 1943, wherein the War Department Wage Administration Agency has denied approval therefor.

3. Copy of the aforementioned teletype is submitted herewith, for your information.

For the Commanding Officer:

HUGO L. LIBBY,
Capt. Ordnance Dep't.,
Executive Officer

Encl:

Cy.TT—10/6/43—C.of O.
to C.O. AOP

cc: Mr. C. H. Harper, Jr.
Mr. A. R. Clerke

COPY
File No. AOP 248.3/20926

[fol. 100]

War Department
Arkansas Ordnance Plant
Little Rock, Arkansas

Prowler/ab

20 October 1943.

Subject: Increase in Rate for Existing Designation.
WD-WAA-1 Facility Submission No. Arkansas—8.

To: Mr. B. E. Harris, General Manager,
Arkansas Ordnance Plant.

With further reference to communication of this office, dated 16 October 1943, wherein was submitted a copy of teletype, dated 16 October 1943, from Office, Chief of Ordnance, denying approval for subject Submission,—transmitted herewith are copies of 1st, 2nd, and 3rd indorsements, relative to action of the War Department Wage Administration Agency, and comments of the Chief, Labor Section.

E. A. HAINE,
Major, Ord. Dep't.,
Commanding.

Encls: Cys. 1st, 2nd &
3rd Inds. above
mentioned.

cc: Mr. C. H. Harper, Jr.
Mr. A. R. Clarke

COPY
File No. AOP 248.3/20994

[fol. 101] O.O. 248.3/6471 Arkansas O. Plt.

Attn: SPOGC—Wage Adm. Unit
AOP 248.3/19893 1st Ind.

Burns
72986

War Department, Ordnance Office, Washington 25, D.C.,
3 September 1943.

To: Wage Administration Agency, Civilian Personnel
Branch, Industrial Personnel Division, Room 5-C-489,
The Pentagon, Washington 25, D. C.

d. Captain Benjamin B. Williams, O-118181, Ordnance Department—

Primary duty Executive Assistant, A.O.P. G.O. No. 37, par. 2, dated November 4, 1942.

[fol. 89] e. Captain Harold Radcliffe, O-409222, Ordnance Department—

Primary duty Army Inspector of Ordnance, A.O.P. G.O. No. 38, par. 2, dated November 5, 1942.

Additional duty Representative for Administering Contracts (with Maj. Fenstermacher), A.O.P. G.O. No. 41, par. 2, dated November 10, 1942.

f. First Lieutenant Verneard W. Hudgins, O-380552, Ordnance Department—

Primary duty Assistant Army Inspector of Ordnance, A.O.P. G.O. No. 4, par. 2, dated August 17, 1942.

g. First Lieutenant George A. Clemow, O-391183, Ordnance Department—

Primary duty Executive Officer, A.O.P. G.O. No. 39, par. 1, dated November 7, 1942.

Additional duty Employee Transportation Officer, A.O.P. G.O. No. 49, par. 1, dated December 1, 1942.

h. First Lieutenant Hugo L. Libby, O-351426, Ordnance Department—

Primary duty Chief, Plant Protection Section, A.O.P. S.O. No. 56, par. 5, dated July 9, 1942.

Additional duty Fire Marshal, A.O.P. G.O. No. 12, par. 1, dated August 31, 1942.

Additional duty Industrial Relations Officer, A.O.P. G.O. No. 44, par. 1, dated November 23, 1942.

i. First Lieutenant Edward O. Green, O-390915, Ordnance Department—

Primary duty Assistant to the Industrial Relations Officer, A.O.P. G.O. No. 52, par. 1, dated December 1, 1942.

1. Complying with the provisions of GPI 9,108.2 there is transmitted herewith submission number:

"Arkansas 8"

requesting approval to change the hiring rate for Janitors and Janitresses from \$.40 to \$.47 per hour and to increase the employees at the \$.40 and \$.43 rate to \$.47 per hour. Request is also made to increase those employees who have worked for 90 days or more to the \$.51 rate.

2. Attention is invited to the fact that the weighted average for this job classification will not exceed the locality weighted average if the hiring rate should be changed to \$.47 and the increases as requested be approved. It is noted that the request to increase employees who have served a period of 90 days or more to the \$.51 rate agrees with an established promotional plan of the company.

3. This office recommends approval of a \$.47 hiring rate effective as of 30 August 1943.

For the Chief of Ordnance:

WILLIAM J. BRENNAN, JR.
Lt. Col., Ordnance Dept.
Assistant

1 Incl.

"Arkansas 8"

[fol. 102]

Teletype

TT 23187

From PEW Wash DC C of O War Dept Oct 15 1943 2056Z
To Arkansas OP Received: 8:00 AM, October 16, 1943
Re "Arkansas 8" War Dept Wage Administration Agency
Has Denied Approval To Employ Janitors and Janitresses
At \$.47 In Lieu Of \$.40 Per Hour. General Order 31 May
Be Followed With Respect To Length Of Service Increases.
Letter Follows. End Cite SPOGC Duncan 160130Z.

Distribution:

cc: Major Fenstermacher

Attention: Mr. Prowler

[fol. 90] j. First Lieutenant James E. Moore, Jr., 0-36-6061, Ordnance Department—

Primary duty Plant Guard Officer, A.O.P. G.O. No. 16, par. 2, dated September 16, 1942.

Additional duty Adjutant, A.O.P. G.O. No. 39, par. 2, dated November 7, 1942.

Additional duty Provost Marshal, A.O.P. G.O. No. 48, par. 3, dated November 28, 1942.

k. First Lieutenant Robert A. Lane, 0-382613, Ordnance Department—

Primary duty Signal Officer, A.O.P. G.O. No. 34, par. 5, dated October 21, 1942.

l. First Lieutenant Taylor D. Wilkes, S-715, A.S.C.—

Primary duty Safety Officer, A.O.P. G.O. No. 47, par. 1, dated November 27, 1942.

m. Second Lieutenant Ward T. Gamble, 0-392384, Ordnance Department—

Primary duty Intelligence Officer, A.O.P. S.O. No. 56, par. 11, dated July 9, 1942.

Additional duty Public Relations Officer, A.O.P. G.O. No. 4, par. 4, dated August 17, 1942.

n. Second Lieutenant Theodore J. Bommer, 0-398261, Ordnance Department—

Primary duty Chief, Utilities Section, A.O.P. G.O. No. 12, par. 5, dated August 31, 1942.

Additional duty Inspector of Government Property, A.O.P. G.O. No. 17, par. 6, dated September 16, 1942.

Additional duty Special Services Officer, A.O.P. G.O. No. 46, par. 3, dated November 26, 1942.

By Order of Lieutenant Colonel Kohloss:

J. E. MOORE,
1st Lt., Ord. Dept.,
Adjutant.

Distribution: "C"

[fol. 103]

Teletype

Jacksonville, Arkansas
21 October 1943

Arkansas Ordnance Plant Calling

War Department Wage Administration, Agency
Washington, D. C.

Attention: Major William H. Bedell

Ford, Bacon & Davis, Inc., Contractor-Operator Arkansas
Ordnance Plant Is Today Filling Appeal From Negative
Ruling Of Your Agency Relative To Application Number
Arkansas "8" Requesting Approval To Change Hiring
Rates For Janitors And Janitresses. Formal Appeal Fol-
lows end SPOCQ Cite TT—

HAINE
Commanding

Official Business

Prowler/ab

Distribution: Major Haine
Mr. Prowler
Mr. Harris
Mr. Harper
Mr. A. R. Clarke

[fol. 104] O.O.248.3/6471 Arkansas O. Plt.

Attn: SPOGC—Wage Adm. Unit

AOP 248.3/19893

SPOC-C 321.8 Arkansas Ord. Plant 4th Ind.

Prowler/ab

Office of the Commanding Officer, Arkansas Ordnance
Plant, Little Rock, Arkansas.

21 October 1943.

To: War Department Wage Administration Agency,
Washington D. C.,

Att'n: Major William H. Bedell.

1. Ford, Bacon & Davis, Inc., Contractor-Operator, this
Plant, has requested that appeal be taken from ruling of
his Agency, relative to subject submission.

[fol. 91]

Exhibit No. 4.

Ordnance Safety Manual.

The Ordnance Safety Manual is a pamphlet containing 221 pages issued by the Office of the Chief of Ordnance, United States Army, and purports to contain "regulations governing the manufacture, storage, loading, and handling of military explosives and munitions at establishments of the Ordnance Department, U. S. Army". Some of the relevant excerpts from the manual are as follows:

Part I.

General Regulations For The Manufacture, Loading, Storage, Handling, Shipping, Surveillance, Maintenance, Salvage, And Destruction Of All Classes Of Military Explosives And Ammunition.

1. Purpose.—The purpose of this manual is to acquaint personnel of the Ordnance Department with the characteristics and hazards of explosives and ammunition, and to prescribe rules and regulations, the application of which will reduce the hazards involved in manufacturing, processing, storing, and otherwise handling explosives and ammunition at ordnance establishments.

2. Scope.—a. This manual gives general and specific information regarding explosives and ammunition in the stages of manufacture, and under the conditions in which they may exist at ordnance establishments, and prescribes safe methods and practices pertaining thereto. Safety requirements which are outlined herein are the minimum compatible with proper safeguarding of personnel and property. These requirements apply only to establishments under the control of the Chief of Ordnance.

b. Regulations pertaining to the storing, handling, shipping, and maintaining of explosives and ammunition at posts, camps, and stations are set forth in appropriate field and technical manuals:

c. The mandatory requirements of this manual are those in which the terms "will" or "must" are used. All mandatory provisions will be complied with unless the Chief of Ordnance grants specific authority to the con-

2. Submitted herewith is memorandum from the General Manager, Contractor-Operator, wherein is included a resurvey of the Little Rock and Jacksonville, Arkansas areas, showing the prevailing rates, together with the request for appeal.

3. It is requested that his Agency make an examination and review of the enclosed, and that this office be advised as soon as practicable.

E. A. HAINE,
Major, Ord. Dep't.,
Commanding

Encl:

Memo of FB&D to C.O.—10/20/43
(in Quint.)

(End of Exhibit 5)

[fol. 105]

(Exhibit 6)

ASF, Office of the Chief of Ordnance, Washington 25, D. C.
10 Jan. 1944

To: Wage Administration Agency, Civilian Personnel
Branch, Industrial Personnel Division, Room 4-C-488,
The Pentagon, Washington 25, D.C.

1. In accordance with the provisions of OPI 9,108.2 there is transmitted herewith submission numbered

“Arkansas 31”

requesting approval to increase the step rates for the classification “Laborer” from \$40-43-51-55 to \$51-55-59-62-66.

2. Data required by OPI 9,108.2 and not included with this submission were forwarded with “Arkansas 3.” It will be noted that Laborers have been hired at \$51 per hour since December, 1942, allowing for only one merit increase within the range. All other classifications have five steps within the range, allowing for five merit increases. The increase in rate range is requested in order to correct this intra-plant inequality. Wage survey data submitted are

trary. The advisory provisions are those to which "may" or "should" be used. All advisory provisions will be complied with unless exceptions are authorized by the commanding officer of the establishment.

3. General definitions.—a. Ordnance Establishment.—An establishment under the direct control of the Chief of Ordnance.

6. Responsibilities for safety.—a. The Chief of Ordnance exercises general supervision over the safety of ordnance establishments. He prescribes general and certain special safety regulations to be applied in manufacturing, loading, storing, handling, shipping, and maintaining explosives and ammunition.

b. The commanding officer of an ordnance establishment is solely responsible to the Chief of Ordnance for the safety of his establishment. He will enforce the mandatory provisions of this manual and will be guided by the [fol. 92] advisory provisions. He will prescribe and enforce such additional safety regulations as may be necessary to meet local conditions not covered by these regulations. He will make a specific written report of any mandatory requirement in these regulations which he may consider impossible of application at his establishment. When, in his opinion, conditions of storage are such that a single fire or explosion endangers large quantities of explosives or ammunition by progressive action from magazine to magazine, a report with recommendations for corrective action will be made to the Chief of Ordnance. Refer to paragraph 24d (2) (d).

c. At each establishment, a safety officer will be appointed by the commanding officer. The safety officer should be the supervisor of safety at the establishment, and is responsible to the commanding officer for the enforcement of all safety regulations and standards, but has no authority to waive or alter any of the provisions of this manual. In establishments where there is a need for professional safety services because of size or nature of operations, a safety engineer will be employed.

taken from six Ordnance facilities outside the immediate locality.

3. This office recommends approval of the increase in rate range as requested. Retroactive approval to 3 December 1942 is requested because it has been the practice to hire individuals at the \$.51 rate since that time.

For the Chief of Ordnance:

WILLIAM J. BRENNAN, JR.

Lt. Col., Ordnance Dept.

wem/ Assistant

1 Incl.

"Arkansas 31" (in dup.)

[fol. 106] To: Chief of Ordnance, Washington 25, D. C.

Attn: Chief, Labor Resources Section.

In the Matter of Application of

Ford, Bacon & Davis, Inc.

(Name of Company)

Application No. "Arkansas 31"

Arkansas Ordnance Plant

(Name of Facility)

Jacksonville, Arkansas

(Location of Facility)

for Wage or Salary Adjustments as set forth in basic communication and indorsement thereto carrying recommendation of Chief of Ordnance.

1. Under authority granted to the War Department Wage Administration Agency in connection with Executive Orders No. 9250 and No. 9328 by the National War Labor Board (General Order No. 14) and by the Commissioner of Internal Revenue (letter of 24 December 1942) approval is denied the request of Ford, Bacon and Davis, Incorporated, Operating-contractor at the Arkansas Ordnance Plant to increase the rate range for the job classification "Laborer" from \$.40-.43-.47-.51-.55 per hour to \$.51-.55-.59-.62-.66 per hour.

2. Approval is denied because the proposed increase would establish rates higher than the sound and tested rates for the locality.

1 3. GOVERNMENT BILL OF LADING
MEMORANDUM COPY

MS-7766736

EXPLOSIVE

EXPLOSIVE

NAME OF INITIAL TRANSPORTATION COMPANY
MISSOURI PACIFIC R.R. CO. (494)

TRAFFIC CONTROL NO. 335028-7

STOP THIS CAR AT FOR

RECEIVED BY THE TRANSPORTATION COMPANY NAMED
ABOVE, SUBJECT TO CONDITIONS NAMED ON THE REVERSE
HEREOF, THE PUBLIC PROPERTY HEREINAFTER DESCRIBED,
IN APPARENT GOOD ORDER AND CONDITION (CONTENTS
AND VALUE UNKNOWN), TO BE FORWARDED TO DESTINATION BY THE SAID COMPANY AND CONNEC-
TING LINES, THERE TO BE DELIVERED IN LIKE GOOD ORDER AND CONDITION TO SAID CONSIGNEE.

PTO, HAMPTON MOALS FOR
ARMY BASE FIRM

WISCONSIN, VIRGINIA

VIA (ROUTE JOURNEY ONLY WHEN SOME SUBSTANTIAL INTEREST OF THE GOVERNMENT IS SUBSERVED THEREBY)

NOT - 3.00 - 3.00 - 3.00

PICK-UP SERVICE AT ORIGIN BY THE GOVERNMENT OR ITS AGENT.
(INSERT "YES" OR "NO")

INITIALS OF SHIPPER'S AUTHORIZED AGENT OR EMPLOYEE

PACKAGES		DESCRIPTION OF ARTICLES (USE CARRIERS' CLASSIFICATION OR TARIFF DESCRIPTION IF POSSIBLE, OTHERWISE A CLEAR NONTECHNICAL DESCRIPTION)	NUMBERS ON PACKAGES	ACTUAL WEIGHTS
NO.	KIND			
1 (765)	C/L BLS	LOS FATTING FURN - CLASS A R. LO. IV. FURN, BOMB TAIL, AM-1001 2 (.025) 10,848 LOT AOP-42 8,252 LOT AOP-43 PARTIAL	500-1 FURNACE	94,848

SIZE CAR IN FEET		MARKED CAPACITY OF CAR		DATE CAR FURNISHED	DATE B/L ISSUED
ORDERED	FURNISHED	ORDERED	FURNISHED		
40'6"	40'6"	1000	1000	11 AUG.	12 AUG. 1944

FROM (SHIPPING POINT)
JACKSONVILLE, FLA.

FROM (FULL NAME OF SHIPPER)
P. O. I. PLANT, JACKSONVILLE, FLA.

NAME
PTO, HAMPTON MOALS FOR
ARMY BASE FIRM
JACKSONVILLE, FLA.

1767-53-AIRMAIL-02361249 "LOT 1"

CHARGES TO BE BILLED TO (DEPARTMENT OR ESTABLISHMENT AND BUREAU OR SERVICE AND LOCATION)

WASHINGTON, D. C.

APPROPRIATION CHARGEABLE
05-501 7120-03 A21/51005

ISSUING OFFICE
P. O. I. PLANT, JACKSONVILLE, FLA.

NAME AND TITLE OF ISSUING OFFICER
C. J. JONES, IT L., BIL. M., I. O.

FURNISH THIS INFORMATION IN CASE OF CARLOAD SHIPMENTS ONLY.
SHOW ALSO CODE MEASUREMENTS FOR SHIPMENTS VIA OCEAN CARRIERS IN CASES WHERE REQUIRED.

VIA (ROUTE JOURNEY ONLY WHEN SOME SUBSTANTIAL INTEREST OF THE GOVERNMENT IS SUBSERVED THEREBY)

NOT - 3.00 - 3.00 - 3.00

PICK-UP SERVICE AT ORIGIN BY THE GOVERNMENT OR ITS AGENT.
(INSERT "YES" OR "NO")

INITIALS OF SHIPPER'S AUTHORIZED AGENT OR EMPLOYEE

PACKAGES		DESCRIPTION OF ARTICLES (USE CARRIERS' CLASSIFICATION OR TARIFF DESCRIPTION IF POSSIBLE, OTHERWISE A CLEAR NONTECHNICAL DESCRIPTION)	NUMBERS ON PACKAGES	ACTUAL WEIGHTS
NO.	KIND			
1 (765)	C/L BLS	LOS FATTING FURN - CLASS A R. LO. IV. FURN, BOMB TAIL, AM-1001 2 (.025) 10,848 LOT AOP-42 8,252 LOT AOP-43 PARTIAL	500-1 FURNACE	94,848

SEALS AOP-4937 & 4938 -- SLAC
WHIP ST. AGREEMENT NO. 10,788

RELEASED TO VALUATION DISCOUNTED
BY TARIFF TO OBTAIN LOWEST RATE
CLD 75089

EXPLOSIVE
PLACARD APPLIED

2,241.5 CU. FT.

CERTIFICATE OF ISSUING OFFICER
CONTRACT NO. OR
PURCHASE ORDER NO.
OR OTHER AUTHORITY FOR SHIPMENT

DATED

(F. O. B. POINT NAMED
IN CONTRACT)

SIGNATURE OF
ISSUING OFFICER

NAME OF TRANSPORTATION COMPANY
MISSOURI PACIFIC R.R. CO. (494)

DATE OF RECEIPT OF SHIPMENT
12 AUGUST 1944

SIGNATURE OF AGENT

W. L. Houston

MEMORANDUM COPY
PROPERTY SHIPPED

3. Approval is granted to change the rate range for the job classification "Laborer" from \$40-43-47-51-55 per hour to \$51-55-59 per hour, effective as of the date of this approval.

4. Approval is granted because the new approved rate range is consistent with sound and tested rates for the locality.

5. The action taken in this ruling is based on the evidence submitted by the operating contractor. Should this evidence subsequently be shown to be incorrect, this ruling shall have no force or effect.

6. Attention is directed to the fact that the time within which appeal from this ruling may be filed with the Appeals Committee, War Department Wage Administration Agency, or with the Commissioner of Internal Revenue, through the War Department Administration Agency, expires on 22 February 1944.

By order of the Secretary of War:

The War Department Wage Administration Agency
per WILLIAM H. BEDELL
Major, F. A.

Date of Ruling 7 Feb 44

1 Incl. w/d

[fol. 107] To: Commanding Officer, Arkansas Ordnance Plant, Jacksonville, Arkansas

1. Attention is invited to 3rd indorsement above in this the War Department Wage Administration Agency has approved three and disapproved two of the hourly rates requested for the job classification "Laborer", in submission

"Arkansas 31#". The Agency's ruling is effective as of 7 February 1944.

By order of the Chief of Ordnance:

WM. J. BRENNAN, JR.,
Lt. Col., Ordnance Department,
wem Chief, Labor Section

cc; Field Director of Ammunition Plants
(w/cy 3rd ind.)

[fol. 108] Approval of a Wage or Salary Adjustment
Through Commanding Officer

Date December 29, 1943

Name of FacilityArkansas Ordnance Plant.....

Name of Operating Contractor..Ford, Bacon & Davis, Inc.

Address of FacilityJacksonville, Arkansas.....

Is there a duly recognized certified labor organization for any or all of the employees affected by the wage or salary adjustment? Yes No. ...x... If yes, name the organization or organizations.

Summarize details of proposed adjustment on following lines. More detailed statement may be made on other sheets, but summary must appear in this space.....

Revise the rate range for the classification laborer from... \$40-43-47-51-55 to \$51-55-59-61-66.....

For details of presentation, see OPI 9,108.2)

proposed effective date of adjustment.. December 3, 1942..

Summarize the reasons necessitating the proposed adjustment. A more detailed statement may appear on other sheets, but summary must appear here. It has been

the practice at this plant since December 3, 1942 to hire laborers at \$51 per hour, and a revision of this rate is requested so that it will be on a five step range as are other classifications at this plant.

For purposes of application of the Little Steel Formula, supply the following information with respect to each unit or individual designation for which adjustment is sought:

- a. Date on which original rates or rate ranges were approved by contracting officer's representative.....
- b. Date on which employees were first hired at the original rates.....
- c. Such earlier date as contractor contends should be used for purposes of computation under Little Steel Formula, attaching documentary evidence in support thereof

Employer:

Ford, Bacon & Davis, Inc.
Operators Ark. Ord. Plant

.....
Name of company

[fol. 118]

Exhibit No. 13.

Arkansas Ordnance Plant
Ford, Bacon & Davis, Inc.

• Operations Manual No. 10

Fuze, Bomb, Tail, AN-M100A1

Section A: Assemble Fuse.

Operation
No. 1

Assemble and Press Relay Cup in Delay Holder.

Insert relay cup, closed end first, in delay holder. Locate holder against locating block on platen of press. Operate foot pedal and press at 60,000 pounds per sq. in.

Hourly Production.....

Operation
No. 2

Reconsolidate Black Powder Pellet.

Place delay holder on base of loading fixture, wrench holes facing downward. Assemble punch guide on base. With tweezers, pick up black powder pellet, inspect for condition, and insert in punch guide. Be sure pellet does not cock in hole. Place assembly on platen of press against the centering block. Reconsolidate pellet at 60,000 pounds per sq. in.

Note: Do not have more than 15 or 20 pellets exposed to air at one time. Do not use pellets which are cracked or chipped.

Hourly Production.....

Operation
No. 3

Seat Cushion in Detonator Holder.

Place cushion in detonator cavity of holder and seat with seating stick.

Hourly Production.....

.....
Name of official

General Manager

.....
Title

24-35420

(End of Exhibit 6)

[Vol. 109]

(Exhibit 6a)

C. Q. M. Form

Arkansas Ordnance Plant
Little Rock, Arkansas

Interoffice Communication

Use this form. Do not depend on verbal transmission.

Keep copy for
your files

To: Mr. Chas. H. Harper, Jr.,
Project Controller

Date March 12, 1942

Your file No. From G. D. Wintersteed,
Chief Project Auditor

Subject: Operations Payroll No. 5. Our file No.

1. It is found that your Operations Payroll No. 5 contains badge numbers of three individuals; namely—Nos. 1105, 1133, and 1134, upon which we have no authority of employment signed by the Commanding Officer.

2. Your attention is directed to the fact that we cannot reimburse until we have of record, both in this office and in the office of the Finance Officer, an approval signed by the Commanding Officer. To avoid delay of these three names, will you kindly submit an approval immediately?

G. D. WINTERSTEEN
Chief Project Auditor.

[fol. 110]

Exhibit 7.

OOSL—Operations

Vellenoweth/vaf

February 25, 1943

Subject: Installation of Prosperity Valves

To: Commanding Officer,
Arkansas Ordnance Plant,
Little Rock, Arkansas.

1. Following Major Bain's inspection of the loading of M54 fuzes and Mk 27 detonators on February 3 and 4 he has recommended that prosperity valves be installed on all consolidation presses.

2. This office requests that these valves be installed as recommended and this office advised when installation is complete.

3. It is recommended that funds to cover installation of valves be obtained from and charged to regular plant operation and maintenance fund.

By order of the Field Director:

E. W. VELLENOWETH,
Major, Ord. Dept.,
Assistant.

C O P Y

File No. AOP 600.1/13404

OOSL 600/64054

[fol. 111]

War Department
Arkansas Ordnance Plant
Little Rock, Arkansas

March 20, 1943

AOP No. 600.1/15639

Fenstermacher/bd

Subject: Installation of Prosperity Valves

Memo to: Mr. R. A. Morgan,
General Manager,
Arkansas Ordnance Plant

1. There is inclosed copy of letter received from the Office of the Field Director of Ammunition Plants pertaining to the above subject.

Operation

No. 4 Insert and Crimp Detonator.

Insert detonator in cavity, colored end first. Assemble holder in fixture, wrench holes facing downward. Lower press ram to crimp detonator in holder.

Inspect to see that detonator is flush or below face of detonator holder.

Hourly Production.....

Operation

No. 5 Stamp Primer Body.

Place empty box in position at the mouth of the chute to receive ejected bodies. Start machine and insert bodies in the stations on dial of press as they are indexed to position in front of operator. Bodies are ejected into chute after stamping.

Hourly Production.....

[fol. 119] Operation

No. 6 Gage Primer.

Insert New No. 4 Primer in gage. Primer must gage freely and seat on shoulder of gage. Reject all primers that do not gage.

Hourly Production.....

Operation

No. 7 Seat Primer in Body.

With tweezers insert New No. 4 Primer in primer body. Place assembly on base on platen of press and seat primer body at 225 pounds dead weight.

Hourly Production.....

Operation

No. 8 Crimp Primer in Body.

Place assembly on base fixture and depress foot treadle to crimp primer in primer body.

Hourly production.....

Operation
No. 9 Insert Sealing Washer.

Insert sealing washer in delay holder cavity of primer body. Seat washer in place with seating stick.

Hourly production.....

Operation
No. 10 Tension Delay Holder in Primer Body.

Coat threads of delay holder with NRC compound. Engage 2 or 3 threads in primer body. Place assembly in the fixture, tighten vise jaws of base, and tension delay holder in primer body.

Hourly production.....

Operation
No. 11 Tighten Detonator Holder in Primer Body.

Start detonator holder in primer body by hand. Assemble primer body to fixture. Engage wrench slots in work holes of holder. Tighten detonator holder to primer body.

Hourly production.....

Operation
No. 12 Stake Detonator Holder in Primer Body.

Place assembly in holding fixture on platen of press. Depress foot treadle to lower the staking punch and stake primer body to detonator holder in two places, 180° apart.

Hourly production.....

[fol. 120] Operation
No. 13 Paint Surface of Primer Detonator.

Paint one-fourth of detonator holder surface on the face of the primer detonator with black paint or enamel to indicate burning time of .025 second.

Hourly production.....

2. Recommendation is made that these valves be installed and that expenditures be charged to regular plant operation and maintenance.

3. Installation of these valves should be assigned a project number in the manner provided and this office advised when installation is complete.

For the Commanding Officer:

LINCOLN W. FENSTERMACHER,
Major, Ordnance Department,
Executive Officer.

Incl. 1

a/s

(End of Exhibit 7.)

[fol. 112]

Exhibit 8.

War Department
Arkansas Ordnance Plant
Jacksonville, Arkansas

15 April 1944

Tolson/cyt

Subject: Purchase of One Photoelectric Gaging Machine,
Artillery Fuze Line No. 2, AOP Project No. 200.

To: Field Director of Ammunition Plants
3629 Lindell Boulevard
St. Louis 8, Missouri

Attn: SPOLY-D

1. In accordance with paragraph 10,103, Section F, of the Ordnance Procurement Instructions, transmitted herewith is memorandum dated 11 April 1944, from the General Manager, Ford, Bacon & Davis, Inc., Contractor-Operator, this Plant, together with description of work, bill of materials, and Specifications for Photoelectric Gaging Machine for Use in Determining the Arming or Non-Arming of the Firing Pin in the M48A2 Delay Plunger Assembly, requesting the approval for purchase of one photo-

Operation
No. 14 Stamp Fuze Body.

Place fuze on holding fixture so that pin of fixture enters primer body cavity of fuze body. Operate lever to stamp required data on body. Remove fuze body from fixture.

Hourly production.....

Operation
No. 15 Gage Depth of Plunger.

Use flush pin gage to gage depth from end of body to tip of plunger (min. depth 1.385").

Note: Before gaging, visually inspect body for presence of plunger assembly.

Hourly production.....

Operation
No. 16 Insert Spring and Seat Spring Retainer in Body.

With fingers insert a spring and a spring retainer in the primer detonator cavity of the fuze body. Place assembly on platen of press and operate press to lower punch and seat spring retainer in fuze body.

Note: Omit this operation when bodies are received with spring and spring retainer assembled.

Hourly production.....

Operation
No. 17 Assemble and Tighten Primer Detonator in Fuze Body.

Engage primer detonator threads in body and tighten hand tight.

Note: Be sure that spring is centered against spring retainer so as to eliminate any possibility of the primer detonator catching and compressing spring during assembly.

Hourly production.....

electric gaging Machine, Artillery Fuze Line #2, at an estimated cost of \$4,485.00.

2. The proposed project has been reviewed and concurred in by the Commanding Officer. It is requested that consideration be given to this project by his office, and that funds be allotted to cover the cost.

CHARLES G. TOLSON,
Major, Ord. Dept.,
Commanding.

4 Incls.

Incl. 1. Memo FB&D to C.O.-AOP 4/11/44 (in Quad.)

Incl. 2 739B (in quad.)

Incl. 3. 679B (in quad.)

Incl. 4. Specifications for Photoelectric Gaging Machine.

cc: Army Inspector of Ordnance
Comptroller
Planning Manager
Plant Engineer
Field Auditor

C O P Y

File No. AOP 600.1/24458

[fol. 113]

War Department
Arkansas Ordnance Plant
Jacksonville, Arkansas

29 April 1944

Tolson/cyt

Mr. B. E. Harris, General Manager,
Arkansas Ordnance Plant.

Re: Purchase of One Photoelectric Gaging Machine,
Artillery Fuze Line No. 2, AOP Project No. 200.

Dear Mr. Harris:

1. With reference to subject Project, this office has received notice that same has been approved, and funds are now available therefor, under Procurement Authority E. P. of E. & S. 1940-44 5-27029 P210 A210/40141.

[fol. 121]

Section B₂ Pack Fuze

Operation

No. 1 Pack Fuze in Container

Place pad in bottom of container. Slip support over booster end of fuze until flange allows assembly of the two diaphragms. Assemble two diaphragms, slots opposite each other, around the tube of fuze. Insert fuze in container and put cover on container.

Hourly production.....

Operation

No. 2 Secure Cover to Body With Sealing Strip.

Apply a strip of adhesive tape around container over joint of body and cover, lapping the ends over to form a tab approximately $\frac{3}{4}$ " long. Take care that sealing strip provides a waterproof seal.

Hourly production.....

Operation

No. 3 Paint Assembly.

Dip the entire assembly in acid-proof black paint, using tongs for handling containers. Place coated assemblies on drying racks and allow to dry thoroughly.

Note: Inspect assemblies frequently for neatness and condition of painting job. Touch up any bare spots with a brush.

Hourly production.....

Operation

No. 4 Attach Label to Assembly.

Secure label to container with bleached shellac varnish. Maintain uniform location of la-

2. Upon completion of the work, the final statement of cost should be submitted for the information of this office. If it becomes apparent that the final cost of the work may exceed the original estimate, this fact should be brought to the attention of this office, in order that a proper review may be made of the Project.

Very truly yours,

CHARLES G. TOLSON,
Major, Ord. Dept.,
Contracting Officer's Representative.

cc: Army Inspector of Ordnance
Comptroller
Planning Manager
Plant Engineer
Field Auditor

C O P Y

File No. AOP 600.1/24698

(End of Exhibit 8.)

[fol. 114]

Exhibit 9.

Army Service Forces
Arkansas Ordnance Plant
Little Rock, Arkansas

EMB Brown vs

In Replying Refer to
SPOCQ No. 600.1/31038

8 May 1945

Mr. B. E. Harris, General Manager
Arkansas Ordnance Plant

Re: AOP Project No. 199.

Dear Mr. Harris:

This office is in receipt of teletype from the Office of the Field Director of Ammunition Plants, St. Louis, Missouri, which states as follows:

"Project No. 199 appears unnecessary for present production schedule. Therefore request uncompleted

work be cancelled. Advise immediately if you do not concur. End SPOLY-D Daddow. Gerber, Field Director."

If for any reason the Contractor does not agree with the above it will be appreciated if you will advise the undersigned as soon as possible.

Very truly yours,

E. A. Haine
Major, Ordnance Department
Contracting Officer's Representative

5-9-45

Copy to: Mr. Bemberg
Mr. Harper
Mr. Pipkin

bels, Waterproof by application of shellac varnish.

Caution: Container assembly must be thoroughly dry before label is attached.

Hourly production.....

Operation
No. 5

Stencil Data on Packing Box.

Stencil lot number, date, and any other data required on packing box.

Hourly production.....

[fol. 122] Operation

No. 6

Pack Containers and Vanes in Packing Box.

Place 25 vanes over wooden fillers on carriage bolts, 6 each on three bolts and 7 on one bolt. Pack first vane on each bolt with flat face of center out and remaining vanes, except last, facing same way. Invert last vane.

Place one sleeve and one washer between each vane. Place metal washer and lock washer on vane and secure with wing nut.

Insert partition in box with vanes in smaller compartment. In larger compartment pack 25 containers horizontally, lengthwise of the box, alternating each layer, end for end, five layers to a box, with one filler in bottom and one between each layer.

Hourly production.....

Operation
No. 7

Secure Cover to Packing Box.

Place one or more fillers on top as required to pack containers tightly. Place data card on fillers.

Secure top with wood screws, seated firmly with screwdriver.

Pass strapping in grooves around box and pull tight until strapping cuts into edges of box.

Hourly production.....

7/20/42

[fol. 123]

Exhibit No. 14.

Appendix A.

Conducting Static Tests.

Operations Manual No. 11
M54 Fuze, Time and Superquick.

- (1) See that all the flash holes are open in the test fixture and assemble test fuzes in fixture (normally 5 assemblies). Do not tighten bar clamp at this time.
- (2) Assemble a "New No. 4 Winchester Primer" in one of the primer holders in the fuze fixture provided for the purpose. Two holders are provided for this purpose but only one is used in ordinary routine tests. For Inspection tests, primers are assembled in both holders.
- (3) Assemble the firing pins in the fuzes and primer holder and tighten bar clamp to secure fuzes.
- (4) Place the gauge on top of the fuze holder and adjust the firing pins so that they just contact the gauge.
- (5) Cover the wheel of the chronograph with white paper.
- (6) Put ink in the container of the pen.
- (7) Place the fuze fixture containing the test fuzes on the carriage in front of the chronograph wheel.
- (8) Adjust the carriage so that all shots will register on the chronograph wheel.
- (9) Start the suction fan.
- (10) Start the chronograph and the direct current generator to operate the pen.
- (11) Pull down hood of suction pipe, to facilitate removal of gases of combustion.

WAR DEPARTMENT
OFFICE OF CHIEF OF ORDNANCE
WASHINGTON, D. C.

SHIPPING ORDER

No. SPOFA-J 50079-5

Date 21 Nov 45

To: Commanding Officer, Arkansas Ordnance Plant, Jacksonville, Ark.

Ship to: Trans Off, Delaware Ordnance Depot, Pedricktown, New Jersey
For Surv and Renov

Routing: None required

Basis: OO 471.87/336; SPOJG 471.87/1983

QUANTITY	ITEM
25 ea	Box, packing, wood for Fuze, bomb, tail, AN M101A1 Drg. 76-16-166, Rev. 4 Released to FS on 1770-4071 Do not furnish boxes for AN M101A2 fuze
25 ea	Box, packing, wood for Fuze, bomb, tail, AN M101A1 Drg. 76-16-166, Rev. 4 Released to FS on 1770-4071 Do not furnish boxes for AN M101A2 fuze

Doc. 10,500

Cost of transportation chargeable to:

Cy of SO to Misc Unit & Miss Lambert,
Ren

By order of the Chief of Ordnance:

Daniel J. Strauss
Daniel J. Strauss, Major

EXHIBIT 10.

107

S. GOVERNMENT BILL OF LAD 3
MEMORANDUM COPY

NO. EX-7766733

CAR INITIALS AND NO.

EXPLOSIVE

EX-7766733

NAME OF INITIAL TRANSPORTATION COMPANY

TRAFFIC CONTROL NO.

MISSOURI PACIFIC R.R. CO. (494)

BLANKET TO 9135

STOP THIS CAR AT

SIZE CAR IN FEET		MARKED CAPACITY OF CAR		DATE CAR FURNISHED	DATE R.L. ISSUED
ORDERED	FURNISHED	ORDERED	FURNISHED		
40'6"	40'6"	800	800	12 APR. 1944	12 APR. 1944

FROM (SHIPPING POINT)

JACKSONVILLE, ARK.

FROM (FULL NAME OF SHIPPER)

T. O. AND C. D. PLANT, JACKSONVILLE, ARK.

MARKS

C. O., U. S. ARMY C. I. DEPT.
LOUISIANA C. I. PLANT
BOYLING, LOUISIANA

CHARGES TO BE BILLED TO (DEPARTMENT OR ESTABLISHMENT AND BUREAU OR SERVICE AND LOCATION)

WASHINGTON, D. C.

APPROPRIATION CHARGEABLE

505-500 P120-03 A212/51005

ISSUING OFFICE

ARK. C. I. PLANT, JACKSONVILLE, ARK.

NAME AND TITLE OF ISSUING OFFICER

COL J. JACOB, 1ST LT. C. I. DEPT., T. O.

FORWARD THIS INFORMATION IN CASE OF CHARGES TO BE BILLED.

NOTE ALSO CHARGE SHIPPER'S FEE SHIPMENTS TO BE BILLED TO SHIPPER IN CASE WHERE SHIPPER.

RECEIVED BY THE TRANSPORTATION COMPANY NAMED ABOVE, SUBJECT TO CONDITIONS NAMED ON THE REVERSE HEREOF, THE PUBLIC PROPERTY HEREINAFTER DESCRIBED, IN APPARENT GOOD ORDER AND CONDITION (CONTENTS AND VALUE UNKNOWN), TO BE FORWARDED TO DESTINATION BY THE SAID COMPANY AND CONNECTING LINES, THERE TO BE DELIVERED IN LIKE GOOD ORDER AND CONDITION TO SAID CONSIGNEE.

CONSIGNEE

TRANS. OFFICER
U. S. ARMY C. I. DEPT.
LOUISIANA C. I. PLANT

DESTINATION

BOYLING, LOUISIANA

VIA (SHAVE JOURNEY ONLY WHEN SOME SUBSTANTIAL INTEREST OF THE GOVERNMENT IS DERIVED THEREBY)

ROP - LAA

PICK-UP SERVICE AT ORIGIN HAS NOT BY THE GOVERNMENT OR ITS AGENT.
(INSERT "YES" OR "HAS NOT")

INITIALS OF SHIPPER'S AUTHORIZED AGENT OR EMPLOYEE

PACKAGES		DESCRIPTION OF ARTICLES (USE CARRIERS' CLASSIFICATION OR TARIFF DESCRIPTION IF POSSIBLE, OTHERWISE A CLEAR Nontechnical DESCRIPTION)	NUMBERS ON PACKAGES	WEIGHTS* ACTUAL
NO.	KIND			
1 C/L (714 E18)		DEMOMATING FUEL - CLASS A EXPLO. IV FUEL, P.D. M48A2 16,642 LOT ACP-3-394 18,970 LOT ACP-3-394	5005	75,684 DUMMAGE

ROP - LAA

PICK-UP SERVICE AT ORIGIN HAS NOT BY THE GOVERNMENT OR ITS AGENT.
(INSERT "YES" OR "HAS NOT")

INITIALS OF SHIPPER'S AUTHORIZED AGENT OR EMPLOYEE

505-500 P120-03 A212/51005

ISSUING OFFICE

ARK. C. I. PLANT, JACKSONVILLE, ARK.

NAME AND TITLE OF ISSUING OFFICER

COL J. JACOB, 1ST LT. C. I. DEPT., T. O.

FORWARD THIS INFORMATION IN CASE OF CHARGES TO BE BILLED.

NOTE ALSO CHARGE SHIPPER'S FEE SHIPMENTS TO BE BILLED TO SHIPPER IN CASE WHERE SHIPPER.

PACKAGES		DESCRIPTION OF ARTICLES (USE CARRIERS' CLASSIFICATION OR TARIFF DESCRIPTION IF POSSIBLE, OTHERWISE A CLEAR Nontechnical DESCRIPTION)	NUMBERS ON PACKAGES	WEIGHTS* ACTUAL
NO.	KIND			
1 C/L (714 E18)		DEMOMATING FUEL - CLASS A EXPLO. IV FUEL, P.D. M48A2 16,642 LOT ACP-3-394 18,970 LOT ACP-3-394	5005	75,684 DUMMAGE

SEALS ACP-4982 & 4983 -- SLAC
FWB WT. AGREEMENT NO. 10,780

RELEASED TO VALUATION PRESCRIBED
BY TARIFF TO OBTAIN LOWEST RATE
USED 73100

EXPLOSIVE
PLACARD APPLIED

CERTIFICATE OF ISSUING OFFICER

CONTRACT NO. OR
PURCHASE ORDER NO. 00-142-22072-REV 2
OR OTHER AUTHORITY FOR SHIPMENT

(F. O. B. POINT NAMED
IN CONTRACT)

NAME OF TRANSPORTATION COMPANY

MISSOURI PACIFIC R.R. CO. (494)

DATE OF RECEIPT OF SHIPMENT

12 APRIL 1944

SIGNATURE OF
ISSUING OFFICER

John Houston

MEMORANDUM COPY

PROPERTY SHIPPED

(12) Place the pen on the wheel and check to see that it is marking properly, and that there is proper contact with the master clock.

(13) Push down lever to operate the hammer, which fires primers and initiates combustion of the fuzes.

(14) Shift the carriage to the right about $\frac{1}{8}$ inch as each revolution is nearing completion in order that the pen will not mark on the line already present.

(15) Remove the pen from the wheel when the base charges of all the fuzes have fired.

(16) Stop the chronograph. Shut off direct current generator (when all firings have been completed.)

(17) Transfer fuze fixture from the chronograph to the table.

(18) Raise the hood of the suction pipe.

(19) Locate the initial primer mark on the chronograph wheel. Draw a line through it and mark the left hand pen line at a point parallel to the initial primer record, using the straight edge provided for this purpose.

(20) Interruptions in the pen line are caused by the clock's pendulum passing through a reservoir of mercury, completing an electrical circuit. Making and breaking of [fol. 124] this circuit registers seconds on the chronograph wheel. These registered seconds vary slightly in length due to the increase and decrease of electric power used to rotate chronograph wheel. For sake of accuracy, all computations are made from point where interruptions occur. Determine the length of the second within which the mark on the pen line is located, using the scale provided for this purpose. The scale is arranged with measurements of different lengths to cover seconds of different lengths, each divided into tenths of a second.

(21) Measure downward from the initial primer mark to the first interruption below the mark. Record this measurement in hundredth parts of a second by interpolation. This measurement will be termed "Initial Fraction" on the Static Control Test Form.

(22) Locate each of the final shot impressions. Draw a line through each, and mark the right hand pen line at points parallel to each on the chronograph final shot. Number these marks commencing with the shot on the left hand side of the chronograph wheel.

(23) Determine length of second within which these shots fell.

(24) Measure upward from the mark parallel with the No. 1 shot to the point of the first interruption above the mark, and record this measurement in hundredths parts of a second. This fraction will then be termed "Final Fraction". Measure and record the other shots in the same manner.

(25) Count the complete number of seconds between the "Initial Fraction" and the "Final Fraction" and record them in the column marked "Inner Seconds."

Note: It frequently happens that the final shots do not all fall in the same second. In this case the final fraction measurements of each shot will have to be computed on the particular second in which it fell (usually all shots fall within one or two seconds). In this case also, care will have to be exercised in counting the complete seconds, as the total number will necessarily be different if the shots do not all fall in the same second.

(26) Add the initial fraction, final fraction and complete seconds of each fuze tested to get its burning time and record this figure in the column marked "Uncorrected Time".

(27) Add the shots together in the "Uncorrected Time" column and divide this result by the number of fuzes tested. Enter this figure in the space marked "Average Uncorrected."

(28) Take barometer reading. Proceed as follows:

a: Adjust the screw at the bottom of the barometer so that the mercury just contacts the point of the pin in the mercury chamber.

b. Adjust the sliding gauge at the top of the barometer so that it just comes to the top of the meniscus of the mercury column. (The eyes of the operator should be on a level with the top of the mercury column in order to eliminate parallax).

c. Read the inches recorded on the barometer at the bottom of the gauge, using the vernier for determining hundredths of an inch.

(29) Record the barometer reading in the space marked "Barometer".

(30) The following formula has been found satisfactory for correcting, for the barometric reading.

$$T_o = \frac{TV B}{5.48}$$

Where B = barometric reading in inches of mercury

T = actual static time of burning in seconds

T_o = time of burning in seconds under standard barometric conditions.

[fol. 125] (31). Deduct the shortest burning of any fuze in the test from the longest and record the result obtained in the space marked "Dispersion".

(32) Enter any other data required, as shown on the "Transmittal Slip" which accompanies the test fuzes, on the Static Control Test Form.

6/5/42.

[fol. 126]

Exhibit No. 15

Operations Manual No. 11

M54 Fuze, Time and Superquick

Appendix B

Method of calculating the proper proportions of fast and slow powder for a pilot lot.

Assume that it is desired to blend fast powder having a static time of 21 seconds with slow powder having a static

time of 39 seconds to make up a 400 pound blend which will have a static time of 25 seconds.

Let A = number of pounds of fast powder
 then $400 - A$ = " " " " slow "

$$\text{Then } 21 A \# - 39 (400 - A) = 25 \times 400$$

$$21 A \# 15600 - 39 A = 10,000$$

$$\text{transposing } 18A = 5600$$

$$A = 311 \text{ pounds of fast powder}$$

$$400 - A = 89 \text{ " " " slow "}$$

The pilot lot is prepared using these amounts of fast and slow powder:

After the powder has been screened, dried, and tested for moisture content, the proper amounts of fast and slow powder are weighed and placed in the 300 pound blender, which is operated for 6 hours at 6 R.P.M. The powder is then emptied into 25 pound containers and stored in heated rest house. As an extra precaution, the powder is re-screened before conditioning to insure the removal of any foreign matter.

Fuze powder for static and ballistic tests is conditioned by pouring $\frac{1}{2}$ pound in each conditioning tray and exposing to the atmosphere in the conditioning room for 6 hours, after which it is poured from the tray into rubber stoppered containers until ready for loading into rings.

Sufficient rings are loaded and assembled into fuzes for static and ballistic tests. If the static time is between the limits of 24.75 seconds and 25.25 seconds, a ballistic sample of fuzes containing the blend is sent to the proving ground. The powder is reblended with fast or slow powder if the ballistic time is not within the limits of 26.7 seconds to 28.5 seconds required by the specification. For example, assume the static time of the pilot lot was 25 seconds and the ballistic time 26.50 seconds. The latter is .2 seconds below the minimum permitted and 1.1 seconds below the desired time of 27.6 seconds.

In reblending the powder, a static time of 26.1 seconds should be aimed at. The amount of slow powder to be added to increase the static time from 25 seconds to 26.1

seconds is calculated using the same method as outlined above.

This process is repeated until a blend giving satisfactory ballistic times is obtained.

6/4/42

[fol. 169] (Request of Plaintiffs for Admissions of Fact by Defendant, etc., and Responses thereto)

(Filed in U. S. District Court on August 9, 1947)

Please take notice that the plaintiff hereby requests the defendant, pursuant to Rule 26 of the Federal Rules of Civil Procedure, to admit within 10 days after service of this request, for the purposes of the above-entitled action only, and subject to all pertinent objections to admissibility which may be interposed at the trial, the truth of the following facts:

1. You, at the time you employed each of the plaintiffs, promised to pay to each at his regular rate for the first forty hours worked in any one work week. By regular rate we mean that rate set forth in your schedule of wages as approved by the Ordnance Department.

Answer: 1. Defendant admits that it promised to pay each hourly-paid employee his regular rate of pay for the first forty hours worked in any week.

2. Your contract with the United States Government provided that you should pay each of the plaintiffs for forty hours worked each work week at a rate equal to his regular hourly rate of pay and for all hours worked in any one work week in excess of forty hours at a rate equal to one-and-one-half times his regular rate of pay. By rate of pay we mean that rate set forth in your wage schedules as approved by the Ordnance Department.

Answer: 2. A copy of the contract between the Government and Ford, Bacon & Davis, Inc., is attached as Exhibit 1 to the affidavit of W. F. Whittle in support of the motion for summary judgment.

3. Your contract with the United States Government provided that each of the plaintiffs would be paid at his

regular rate for eight hours worked each day and one-and-one-half his regular rate for all hours worked in excess of eight hours in any one day.

Answer: 3. A copy of the contract between the Government and Ford, Bacon & Davis, Inc., is attached as Exhibit 1 to the affidavit of W. F. Whittle in support of the motion for summary judgment.

4. You have not paid all of the plaintiffs for the hours worked, in accordance with statements 1, 2 and 3, above set forth.

Answer: 4. Defendant refuses to admit requested admission of fact No. 4.

5. Your operations at the Arkansas Ordnance Plant were checked by the Administrator of the Department of Labor, Wage and Hours Division.

Answer: 5. Defendant admits that from time to time the Wage and Hour Division of the Department of Labor made investigations at the Arkansas Ordnance Plant.

Filed Aug. 9, 1947. Grady Miller, clerk.

[fol.170] 6. You were furnished finding by the Administrator of the Department of Labor, Wage & Hour Division.

Answer: 6. The Department of Labor in some, but not in all, instances furnished the defendant with its findings.

7. The Department of Labor, Administrator Wage & Hour Division, after investigation of your operation at the Arkansas Ordnance Plant, found that your operation was governed by the Wage and Hour Law.

Answer: 7. Some of the defendant's records have been destroyed by fire. We find no record at this time indicating that the Arkansas Ordnance Plant was governed by the Wage and Hour law, but the defendant believes that the Department of Labor was of the opinion that employees at the Arkansas Ordnance Plant were subject to the Fair Labor Standards Act.

8. The Department of Labor, Wage & Hour Division, rendered to you its opinion as to your operation, after investigating such:

Answer: 8. It is believed that the Department of Labor made no general investigation concerning the question of whether employees at the Arkansas Ordnance Plant were subject to the Fair Labor Standards Act.

9. You required these plaintiffs to report early for work each shift worked by them, and remain on the premises for the full term of their shift.

Answer: 9. The defendant refuses to admit requested admission No. 9.

10. You required these plaintiffs, in addition to their regular shift tour, to remain on your premises subject to be called to duty for a period of thirty minutes each shift worked.

Answer: 10. The defendant refuses to admit requested admission No. 10.

11. Your employees at the Arkansas Ordnance Plant made, manufactured, produced and processed goods, wares, merchandise, machines and tools, other than munitions of war, which were shipped out of the State of Arkansas.

Answer: 11. The Arkansas Ordnance Plant was operated for the purpose of producing munitions of war. These munitions were by the Government shipped to destinations outside of Arkansas.

12. Your employees at the Arkansas Ordnance Plant designed parts for, manufactured parts for, altered and repaired machines which were and now have been shipped from the State of Arkansas.

[fol. 171] Answer: 12. The defendant designed parts for and in some instances manufactured parts for machines that were used at the Arkansas Ordnance Plant. It also altered and repaired such machines. These machines were used at the Arkansas Ordnance Plant. The defendant is not informed as to the disposition made by the Government of this property after termination of operations at the plant.

13. Your employees at the Arkansas Ordnance Plant worked on processed, assembled and disassembled certain wares, goods and merchandise which, being unfit for muni-

tions of war, were sold as salvage, shipped from the State of Arkansas and sold to private individuals.

Answer: 13. Some materials were scrapped and by direction of the Ordnance Department sold as salvage f. o. b. the plant at Jacksonville, Arkansas. Copies of records indicating the method of disposition of salvage are attached as Exhibit "A".

14. You were in competition with other cost-plus-fixed-fee contractors in the United States who were equipped to manufacture and assemble the same type munitions as you were producing.

Answer: 14. The defendant operated the Arkansas Ordnance Plant under the provisions of its contract with the United States Government. The Government directed the type and quantity of all munitions manufactured. See Exhibit "B" attached hereto.

15. The Department of Labor, after [investigation] your operation at the Arkansas Ordnance Plant, ordered you to pay your employees in accordance with the terms of the wage and hour law.

Answer: 15. The defendant refuses to admit requested admission No. 15.

16. You were required to and did qualify to enter the State of Arkansas as a foreign Corporation when you moved onto the reservation at Jacksonville and subsequently paid the tax levied by such state on foreign corporations.

Answer: 16. The defendant admits that it qualified to do business in Arkansas, and that it complied with all provisions of law.

17. You at all times led these plaintiffs to believe you would and were paying them in accordance with the provisions of the Wage and Hour Law?

Answer: 17. The defendant denies that it has violated the Fair Labor Standards Act.

[fol. 172] 18. You at all times led your employees to believe that you were and would pay them in accordance with the terms of the Wage and Hour Law.

Answer: 18. The defendant denies that it has violated the provisions of the Fair Labor Standards Act.

19. That under the terms of the regulations, order, rules, approvals and interpretations of the Ordnance Department of the United States Army, an agency of the United States, you were at all times mentioned in the complaint and interventions filed herein, subject to the terms of the Wage and Hour Law of 1938, as amended.

Answer: 19. The defendant is aware of no regulation, order rule, approval, or interpretation of the Ordnance Department to the effect that employees at the Arkansas Ordnance Plant were covered by the Fair Labor Standards Act. As a practical matter, the Ordnance Department instructed and approved the payment of all hourly-paid employees at one and one-half or two times their regular hourly rate for all hours in excess of forty worked during any one work week, thereby eliminating as to them any question of coverage under the act.

20. Pursuant to regulations, orders, rules, approvals, and interpretation of the Ordnance Department of the United States Army, an agency of the United States you, at all times mentioned in the complaint and interventions filed herein, were paying all "hourly rate" employees, for the time you considered them to be on duty, in accordance with the terms of the Wage and Hour Law of 1938, as amended.

Answer: 20. See admission No. 19 above

21. That you promised each and every hourly rate employee that he would be paid at his regular rate for 40 hours worked in each work week, and for all hours worked in excess of 40 hours in any one work week at one-and-one-half times his hourly rate.

Answer: 21. The report of hire form did not set forth any provision relating to overtime pay. The Employees' Manual of General Information stated that overtime would be paid.

22. That the Ordnance Department of the United States Army, an agency of the United States, at no time issued to you any formal regulations, orders, rulings and approval

relating to the payment of any questioned overtime which the plaintiffs and interveners worked at Arkansas Ordnance Plant.

Answer: 22. Defendant refuses to admit requested admission No. 22.

[fol.173] 23. That in pursuance of General Order No. 31 of the War Labor Board, Ford, Bacon & Davis, Inc., submitted a wage plan to said board for its approval.

Answer: 23. See answers to interrogatories numbered 42 and 43.

24. That General Order No. 31 of the War Labor Board was general in its nature and did not apply exclusively to the Arkansas Ordnance Plant.

Answer: 24. The extent of applicability of General Order No. 31 of the War Labor Board is not a proper question for determination by the defendants.

25. That the following is a true and correct copy of the report of Staff Meeting No. 94, held on or about March 22, 1944, insofar as said report deals with "Salary Adjustments":

"Staff Meeting No. 94
March 22, 1944

"Salary Adjustments"

"At Mr. Harris' suggestion the following points under our present wage plan for non-supervisory employees were brought up for discussion and clarification:

"Number of Increases that may be made in a Year: Mr. Clarke explained that when we submitted our wage plan under the War Labor Board's then existing General Order No. 31, we adopted the merit increase system and when we made our submission we included in our letter that it was the intention of the present management to limit merit increases to two a year, and that we are bound by that intention.

"Clarification of the Meaning of a Year: Mr. Clarke said that under the Order it constitutes practically what we want to make it. It is either a year of employment or

a calendar year. Mr. Harper said we are now operating under the employment year or the date of reclassification.

"Ninety Day Limitation on Salary Increases: It was brought out that we observe the ninety day limitation on salary increases as this part of our plan.

"Promotions and Reclassifications: On promotions to classifications carrying a higher wage bracket this employee starts at the minimum of comparable rate, and he starts his employment year anew and may be given two merit increases from the time of the reclassification. In changing classifications carrying the same wage bracket, this is to be treated as one classification and only two merit increases may be given in the year.

"An understanding of the plan was summed up to mean that an employee may not be given a raise in less than 90 days from his previous raise or date of hire in any classification and cannot be given more than two such raises within a single 12 month period."

Answer: 25. See answer to interrogatory No. 45.

26. That the above purported excerpt of the the Staff Meeting No. 94, held on or about March 22, 1944, is substantially correct.

Answer: 26. See answer to interrogatory No. 45.

[fol. 174] 27. That Mr. Harris, referred to in the above report, was General Manager of the Arkansas Ordnance Plant, and an employee of Ford, Bacon & Davis, Inc.

Answer: 27. Defendant admits requested admission Number 27.

28. That Mr. Clark, deferred to in the above report, was A. R. Clarke, Head of the Personnel Department of the Arkansas Ordnance Plant and an employee of Ford, Bacon & Davis, Inc.

Answer: 28. Defendant admits requested admission No. 28.

[fol. 174a]

Exhibit "A".

War Department
Arkansas Ordnance Plant
Little Rock, Arkansas

AOP No. 160/21916

McGowen/vw
3 December 1943

Mr. B. E. Harris, General Manager
Arkansas Ordnance Plant

Re: Sale of Salvage Material

Dear Mr. Harris:

1. Reference is made to your letter dated 30 November 1943, same subject as above, and the analysis of bids attached thereto, AOP File No. 400.71/19419.

2. Approval is granted for sale of the following salvage material as stipulated in reference letter:

Approximately 35 gross tons of unprepared heavy and light iron mixed, including steel containers at \$10.39 per gross ton to Southwest Compressed Steel Corporation.

Approximately 10,000 pounds of mixed aluminum scrap at .045 per pound to A. Tenenbaum Company, Incorporated.

Approximately 20,000 pounds of mixed brass scrap at .053 per pound to A. Tenenbaum Company, Inc.

Approximately 2,500 burlap bags (100 pound capacity) at .06 each to Sol Alman Company.

3. It is understood that applicable OPA price regulations have been complied with in each instance.

4. All copies of the bills of sale are returned herewith bearing approval of this office.

For the Contracting Officer's Representative:

Yours very truly,

CHARLES G. TOLSON,
Major, Ord. Dept.
Commanding

Incls: n/c

[fol. 174b]

War Production Board
Washington, D. C.

December 7, 1944

M-9 OPN 1629 R

Allocation No. A-1369

War Department,
Office, Chief of Ordnance
Washington 25, D. C.

Attention: Industrial Service, Production Service Division
Redistribution & Salvage Branch
Salvage & Scrap Section

Gentlemen:

Please ship from Arkansas Ordnance Plant, Little Rock, Arkansas, to International Minerals & Metals Company, the following material during December:

- 1 car (approximately 80,000 pounds)
Brass Shavings & Borings.
- 1 car (approximately 80,000 pounds)
Fuzes & component parts sold as refinery brass.

This firm will furnish you with loading and shipping instructions.

Very truly yours,

G. P. NORTON, Chief, Scrap Branch
Copper Division
WPB Dept. 7300

cc: International Minerals & Metals

O.O. 470.1/42147

Leyava/ee

Attn: SPOIP

1st Ind.

73671-6257

War Department, Ordnance Office, Washington, D. C.,
9 December 1944

To: Commanding Officer, Arkansas Ordnance Plant, Little Rock, Arkansas.

1. Basic letter from the War Production Board (Allocation No. A-1369) covers approximately 80,000 pounds of brass shavings and borings, and approximately 80,000 pounds of fuses and component parts as refinery brass allocation to International Minerals & Metals Co., New York, New York, for shipment during the month of December at the maximum applicable OPA price for copper content as shown by mill analysis, in accordance with MPR #20.

2. This confirms our teletype of 7 December 1944, a copy of which is attached.

By order of the Chief of Ordnance:

MILTON LEVENSON,
Capt. Ord. Dept.
Assistant

1 Incl: C of our TT 12/7/44

[fol. 174c]

7 Dec

LEYAVA/cc
73671 — 6257

Commanding Officer
Arkansas Ord Plant
Jacksonville, Ark

Reurtt 23677 7 Dec 14202 And2d Ind SPOCQ 160/28183
29 Nov Melin WPB Has Allocated Subject Material As 2
Carloads Of Refinery Brass To International Minerals &
Metals, New York, New York For December Shipment On
Allocation A-1369 Forth Coming. Complete Your Form
S Allocation Contract And Secure Shipping Instructions
From Mr. Markwitz Of International Minerals & Metals.
Authority Granted To Ship Prior To Receipt Of Signed
Contract End SPOIP

Safford

[fol. 174d]

War Department
Arkansas Ordnance Plant
Little Rock, Arkansas

20 December 1944

McLin/cht

File No.

SPOCQ No. 160/28700

Mr. B. E. Harris, General Manager
Arkansas Ordnance Plant

RE: Allocation of Brass.

Dear Mr. Harris:

1. Forwarded for action by your office is a copy of a letter dated 7 December 1944, from the War Production Board, to the Chief of Ordnance, Subject: Allocation No. A-1369, together with 1st indorsement from the Chief of Ordnance, directing this plant to ship two carloads of refinery brass to International Mineral & Metals Co., New York, New York.
2. The regular Form-S Allocation Contract will be required for this transaction, with payment to be made at maximum applicable OPA price as shown by mill analysis.
3. In accordance with conversation of 19 December 1944, between Mr. L. H. Sickels, of your office, and Captain Jacobs and Mr. McLin of this office, the present contract with A. Tenenbaum & Company, Inc., should either be cancelled or allowed to lapse, at your discretion.
4. As of December 1944, the Redistribution and Salvage Branch, Office of Chief of Ordnance, advised that shipment of this brass need not go forward until the first week in January 1945. This will allow time for the present contract of A. Tenenbaum & Company, Inc., to expire.

Very truly yours,

E. A. HAINE,
Major, Ordnance Department,
Contracting Officer's Representative.

Incls: -a/s.

(End of Exhibit A.)

[fol. 175]

Exhibit "B".

War Department

Arkansas Ordnance Plant

Little Rock, Arkansas

August 24, 1942

General Orders)

No. 7

1. In order to maintain high standards of quality, safety, and morals of the operating personnel, there will be no competition in quantity production between any producing units at this Plant.

2. Production should proceed on a planned schedule as approved, and competition between bays, lines, or areas striving to out produce other units should be prohibited.

3. No awards, honors, or other recognition should be given to the high producing sections.

4. No unreasonable pressure will be exerted on operating personnel by persons in a supervisory capacity to increase excessively the rate of production over the normal schedule.

By Order of Lieutenant Colonel Korloss:

HAROLD RADCLIFFE,
1st Lt., Ord. Dept.,
Executive Officer.

Official:

/s/ Edward O. Green

EDWARD O. GREEN,

1st Lt., Ord. Dept.,

Adjutant.

Distribution—

General Manager (12)

Lt. R. A. Lane-Guards (6)

All Ord. Officers (3)

St. Louis District (3)

Explosive Safety Branch,
Chicago, Illinois. (3)

8th Service Command,

Ft. Sam Houston, Texas. (3)

[fol. 176] (Interrogatories to be propounded by Plaintiffs to Defendant and Responses thereto.)

(Filed in U. S. District Court on August 9, 1947)

1. Please state whether or not goods of any nature were purchased by you during your operation of Arkansas Ordnance Plant which were not bought on bids and if so, the nature, and extent of such purchases.

Answer: 1. According to the records and to the best of my knowledge, until about June, 1942, all purchases were made with the prior approval of the Contracting Officer's representative. After that date, prior approval of the Contracting Officer's representative was not required on purchases of less than \$500.00, but a large number of such purchases were submitted to such representative for prior approval. All purchases were audited by the Ordnance Department and approved for payment on 1034 Public Reimbursement Vouchers (standard Government form). The above statements apply equally to materials purchased on bid and to materials procured by emergency purchase. Material procured by bid far exceeds in amount material procured without bid. No invoices were paid until audited and approved by the Government.

2. If your answer to the foregoing interrogatory is in the affirmative, please state whether or not any of such purchases were made out of the State of Arkansas and shipped into Arkansas.

Answer: 2. According to the records, and to the best of my knowledge, on occasion materials were purchased without bids from vendors located outside the State of Arkansas, and the materials so purchased were shipped to the Arkansas Ordnance Plant from without the State of Arkansas.

3. State whether or not you ever made any purchases of goods outside the State of Arkansas without notifying the Ordnance Department of such and getting its approval.

Answer: 3. According to the records, and to the best of my knowledge, no.

4. State whether or not it was customary to purchase goods from without the State of Arkansas, prior to getting approval of such from the Ordnance Department.

Answer: 4. According to the records, and to the best of my knowledge, no.

5. State whether or not the Ordnance Department inspected and approved all shipments to your plant before it would take title to such.

Answer: 5. According to the records, and to the best of my knowledge, the United States Government, through the Ordnance Department, took title to all materials purchased for use at the Arkansas Ordnance Plant at their respective points of origin, subject to inspection and acceptance upon delivery at the plant site.

[fol. 177] 6. Please state whether or not the land grant railroads, over which you received shipments, granted you military rates on such shipments, under protest and now have claims pending against the Government for the difference in such rates and commercial rates?

Answer: 6. According to the information furnished me by the Ordnance Department, land grant freight rates were allowed during the entire period of operation of the Arkansas Ordnance Plant, in accordance with applicable provisions of Ordnance Procurement Instructions. The contractor has no knowledge of any protest or claim pending. Any such claims would probably be made against the Government, who paid freight bills direct, and not against Ford, Bacon & Davis, Inc.

7. Was it or was it not a common practice for you to draw checks on your accounts in local banks in payment of purchases made by you, prior to approval of such by the Ordnance Department?

Answer: 7. According to the records and to the best of my knowledge, no checks were drawn by Ford, Bacon & Davis, Inc., either against its private funds or against funds furnished by the Government in payment of materials

purchased for use at the Arkansas Ordnance Plant, prior to approval by the Ordnance Department.

8. On many occasions, were purchases made by you for operation of the Arkansas Ordnance Plant from your private funds?

Answer: 8. According to the records and to the best of my knowledge, no, never.

9. Name the ordnance plants to whom you shipped assembled products and if you know, state whether or not such plants were operated by contractors on a cost-plus-fixed-fee basis.

Answer: 9. A complete list of ordnance establishments in the United States is attached as Exhibit "A". According to the information furnished by the Ordnance Department, all completed products of the Arkansas Ordnance Plant were shipped either to one of the installations listed therein or to a port of embarkation for overseas shipments. A list of ports of embarkation is attached as Exhibit "B". Information from the Ordnance Department is to the effect that shipments were not made to each of these installations. Some of the consignees of material shipped from the plant are as follows:

Transportation Officer, United States Army Ordnance Department, Louisiana Ordnance Plant, Loyline, La.

Transportation Officer, United States Army Ordnance Department, Erie Proving Ground, Lacarne, Ohio.

Transportation Officer, U. S. Army Ordnance Department, Lone Star Ordnance Plant, Defense, Texas.

[fol. 178] Transportation Officer, U. S. Army Ordnance Department, Picatinny Arsenal, Picatinny, New Jersey.

Transportation Officer, Columbus Army Service Forces Depot, Columbus, Ohio.

Transportation Officer, United States Army Ordnance Department, Frankford Arsenal, Bridesburg Station, Philadelphia, Pa.

Transportation Officer, United States Army Ordnance Department, Elwood Ordnance Plant, Elwood, Ill.

10. The items shipped directly overseas by you were consigned to whom?

Answer: 10. According to the information furnished by the Ordnance Department, materials shipped from the Arkansas Ordnance Plant for direct overseas destinations were consigned to the Port Transportation Officer at various ports of embarkation. A list of ports of embarkation is attached as Exhibit "B". A photostat of a duplicate bill of lading covering such a shipment is attached as Exhibit 12 to the affidavit of W. F. Whittle in support of defendant's motion for summary judgment.

11. State whether or not free-issue materials, which you received, were manufactured by Government-owned and operated arsenals or by cost-plus-contractors?

Answer: 11. According to the records and to the best of my knowledge, free issue materials were manufactured both in Government-owned and operated arsenals and in Government-owned and contractor-operated establishments.

12. Give the amount paid to the State of Arkansas as sales tax on purchases made by you for the operation of the Arkansas Ordnance Plant.

Answer: 12. According to the records and to the best of my knowledge, no State sales tax was paid on purchases during the period of operations.

13. Please state whether or not Ordnance Fiscal Circular No. 70, Change No. 2, dated August 25, 1942, was issued in order that no fee would have to be paid you on expenditures made by you for the items mentioned therein?

Answer: 13. The contract between the Government and Ford, Bacon & Davis, Inc., provides for a fixed fee, which is not determined by the amount of expenditures.

14. Please state whether or not the United States Government retained the right to supply electricity for your

use at the Arkansas Ordnance Plant and if such effected a savings to the Government?

Answer: 14. Under the provisions of Paragraph 3, page 27, of the prime contract between the Government and Ford, Bacon & Davis, Inc., the Government retained the right to furnish any materials or services to the contractor, as it might elect. The contractor has no knowledge [fol. 179] concerning whether in electing to furnish materials or services the Government saved money.

15. State whether or not you were ever assigned schedules, which had been previously assigned other cost-plus-fixed-fee contractors.

Answer: 15. According to information furnished by employees of the Ordnance Department, on a few occasions schedules were transferred from other government-owned contractor-operated facilities to the Arkansas Ordnance Plant.

16. For what purpose did you maintain a cost accountant at the Arkansas Ordnance Plant?

Answer: 16. In order to comply with Title VII, Article VII-F, of the prime contract, the Ordnance Procurement Instructions, and instructions received from the Field Director of Ammunition Plants, it was necessary to employ a full-time cost accountant.

17. Did you have, during the period of your operation at Arkansas Ordnance Plant, a method by which you determined the unit cost of production?

Answer: 17. Yes.

18. For what purpose were the materials used upon which you paid Arkansas Sales Tax?

Answer: 18. As stated in the answer to Question No. 12, no sales tax was paid.

19. When O. P. I. Section 8500 become effective and when and upon what items did you discontinue payment of Federal Excise Tax?

Answer: 19. According to the records and the best of my knowledge, O. P. I. Section 8500 became effective January 27, 1942, and was revised on December 1, 1942. It was, therefore, in effect during the entire period of operations. The excise taxes mentioned in the statement of production costs attached as an exhibit to the affidavit of W. F. Whittle on the motion for summary judgment were taxes on pay rolls. Attached hereto and marked Exhibit "C" is a copy of the authorization to Ford, Bacon & Davis, Inc., to grant tax exemption certificates.

20. As provided in O. P. I. Section 53009.1, state when the property officer took charge of materials shipped to Arkansas Ordnance Plant.

Answer: 20. O. P. I. Sections 50105.1 and 50105.2 direct the Contracting Officer to cause delivery to be taken by the Government and title to be vested in the Government at the point of origin of such property. To the best of my knowledge, this procedure was uniformly followed at the Arkansas Ordnance Plant.

[fol. 180] 21. State when and under what conditions you took custody of property from the property officer.

Answer: 21. According to the records, and to the best of my knowledge, after materials shipped to the Arkansas Ordnance Plant had been inspected and accepted and after a receiving and inspection report and a tally-in sheet had been certified by the Ordnance Department the contractor stored the material for use in accordance with the contract.

22. What was the procedure used for relieving you of liability for property placed in your custody?

Answer: 22. Title VII, Article VII-A, of the prime contract, fixes the responsibility of the contractor in the operation of the plant. When the contract between the Government and Ford, Bacon & Davis, Inc., covering the operation of the plant was terminated, the Government, through its Contracting Officer, determined that no property was lost, destroyed, or damaged directly through bad faith or willful misconduct on the part of the contractor or its officers or agents, and, therefore, no liability for property

was ever incurred by Ford, Bacon & Davis, Inc. A copy of the letter from the Contracting Officer is attached as Exhibit "D".

23. Is it a fact that the Ordnance Department maintained inspectors on your production lines?

Answer: 23. Yes. See Exhibit "D-1/2" attached.

24. Did the Government inspectors have authority to reject material processed by you and did they actually reject such products?

Answer: 24. According to the records and to the best of my knowledge, Government inspectors had the authority to determine that processed material should not be shipped for use by the Ordnance Department. These inspectors could determine whether or not the processed material was in accordance with specifications and could determine what disposition should be made thereof.

25. When lots of your products were rejected, which could not be reworked, what disposition was made of them?

Answer: 25. According to the records and to the best of my knowledge, such materials were first made safe for handling and then were scrapped at the direction of the Ordnance Department.

[fol. 181] 26. Was any material bought by you and shipped to Arkansas Ordnance Plant consigned directly to you, rather than the property officer?

Answer: 26. All vendors were instructed to consign materials to

"Ordnance Property Officer
Jacksonville, Arkansas

For account of Operator: Ford, Bacon & Davis, Inc."

A photostat of the standard form of purchase order is attached as Exhibit 3-A to the affidavit of W. F. Whittle in support of the motion for summary judgment.

27. Please state whether or not all employees of Ford, Bacon & Davis, Inc., at the Arkansas Ordnance Plant were paid from funds advanced by the United States Government.

Answer: 27. Yes.

28. Please state whether or not wage classifications were set up by you for each plaintiff in these cases.

Answer: 28. According to the records and to the best of my knowledge, the contractor working in cooperation with the Ordnance Department established wage classifications and rates for all classes of employees at the Arkansas Ordnance Plant. These classifications and rates were approved by the Ordnance Department.

29. Please state whether or not the Secretary of Labor set up minimum wage rates for each of the plaintiffs employed by you?

Answer: 29. According to the records and to the best of my knowledge, no. 7

30. Please state what the minimum wage rate for each of the plaintiffs was during the term of their employment.

Answer: 30. A large number of the plaintiffs in this consolidated case have been furnished with copies of their employment records showing the date of employment under each different classification for each employee and the wage or salary paid. Under the wage rate schedule proposed under date of January 1, 1942, the lowest hourly rate of any employee at the Arkansas Ordnance Plant was 40¢. This schedule has been filed with the clerk, and minimum wage rates for any classification may be determined by reference thereto.

31. Please state whether or not you agreed to pay each of the plaintiffs at their regular rate of pay, as fixed, for the first forty hours worked in each work week and at one-and-one-half times their regular rate of pay for all hours worked in excess of forty in any one work week.

[fol. 182] Answer: 31. According to the records and to the best of my knowledge, all non-supervisory employees at the Arkansas Ordnance Plant were paid time and one-half for all hours in excess of forty worked during any one work week. There was no agreement regarding such payments incorporated in the report of hire form.

32. In your statement of production cost you show, Item 551 a credit for "Revenues Credited to Operating Cost," please state the source of such revenue.

Answer: 32. Item 551 includes money collected by the contractor for the Government and remitted to the Government. These revenues included rentals on dwelling houses on the plant area, rentals on dormitory accommodations, receipts from vending machines located on the plant area, shortage and damage claims, sale of scrap and salvage, and other miscellaneous receipts.

33. In your statement of production cost you show, Item 536, "Materials Manufactured for Inventory", please state where such materials were manufactured, from what source the component parts came and the final disposition of such inventory.

Answer: 33. This item includes materials upon which processing had commenced, but had not been finished, at the time operations at the plant ceased. These materials were manufactured in the same manner and from materials obtained in the same manner as were all other goods manufactured or processed at the plant. This material was taken over by the Government upon termination of the contract.

34. Please attach the entire document as approved setting forth the wage schedules of Arkansas Ordnance Plant, together with a copy of your letter of transmittal to the commanding officer and his letter transmitting such schedules to Washington, D. C.

Answer: 34. A file containing wage and salary schedules proposed January 1, 1942, and April 6, 1942, has been filed with the Clerk of the Court.

35. Please state the manner in which you were required to dispose of all salable salvage material at Arkansas Ordnance Plant.

Answer: 35. According to the records and to the best of my knowledge, Government-owned materials determined by the Ordnance Department to be unuseable were certified by the Ordnance Department as salvage and the contractor was requested to negotiate sales of such salvage. At the direction of and with the approval of the Contracting Officer, the contractor disposed of such salvage by sale on bid or by fixed price, and the receipts therefrom were remitted to the Government. Such materials were sold f.o.b. Plant Site, Jacksonville, Arkansas. The Ordnance Department disposed of certain salvage materials through its own facilities. On many occasions the Ordnance Department would direct the contractor to sell certain items of salvage to certain specific purchasers at a stipulated price.

36. Of what did salable salvage material consist and to whom was it sold?

Answer: 36. According to the records, and to the best of my knowledge, salable salvage material consisted of waste paper, rags, unuseable packing boxes, cans, lumber, containers, broken glass, and metal. Unless otherwise instructed by the Government, such salvage was sold to any qualified bidder.

37. State the date, bulletin number and order number of any and all regulations, rules, approval or interpretation of your operation under the Fair Labor Standards Act in which the Ordnance Department of the United States Army, an agency of the United States Government, attempted to interpret, and the manner of your operations as it related to the Fair Labor Standards Act of 1938, as amended.

Answer: 37. The Ordnance Department approved wage rates and job classifications for employees at the Arkansas Ordnance Plant. Examples of the schedules dated January 1, 1942, and April 6, 1942, have been filed with the clerk of the court. (See response to Interrogatory No. 34.) All reports of hire and changes of status of employees were also

approved by the Ordnance Department before these changes became effective. Exhibit "D-1" attached hereto is an example of the approval given by the Ordnance Department to the hiring of new employees. Exhibit "D-2" attached hereto is an example of the approval given by the Ordnance Department to changes of status of employees. The code numbers contained in these forms "D-1" and "D-2" refer back to a previously approved wage rate and job classification schedule. The time cards of employees were checked by the Ordnance Department each week and the time for which compensation was due was approved by the Ordnance Department. Exhibit "D-3" attached hereto is a photostat of a time card for regular time and also a time card for overtime. Each of these cards indicates approval by a representative of the Ordnance Department. The initials appearing in the extreme right hand column of the time card at the bottom of Exhibit "D-3" are initials of the Government Checker on the daily clock time. At the end of the week, after examining the total hours for the week, the Government checker signed the card in the space marked "Approved Ordnance". Time cards such as these were the basis for computing the pay of employees. Duplicate time records were maintained by the Government. Exhibit "D-4" attached hereto is a photostat of the front and back of a recomputed time card made from Government records to replace a card that had been lost. The approval [fol. 184] signatures and initials on both the front and back of Exhibit "D-4" are those of a Government checker. All wage and salary payments were made in accord with the approvals mentioned above. A complete pay roll was prepared by the contractor and submitted to the Ordnance Department. These pay rolls were audited by the Ordnance Department. If found to be correct, or if incorrect, after corrections had been made, these weekly pay rolls were approved by the Ordnance Department auditor and the contracting officer's representative put the following certification thereon:

"This is to certify that this salary pay roll has been examined and the compensation, including increases in compensation, paid to the individuals has been approved.

2 For Contracting Officer:

Contracting Officer's
Representative."

Ordnance Procurement Instructions, paragraphs 9101.1, 9102, and 9107.1, indicate the relationship between the Government and the contractor regarding employment and pay of employees. These instructions are attached as Exhibits "E", "F", and "G", respectively. Copies of miscellaneous correspondence showing the control maintained by the Government over wages and salaries paid to employees of the Ordnance Plant are attached as Exhibits "H", "I", "J", and "K".

38. Please attach hereto copies of all regulations, orders, rulings, approvals and interpretations of the Ordnance Department of the United States Army as directed to you with reference to your compliance or non-compliance with the Fair Labor Standards Act of 1938, as amended.

Answer: 38. See answer to Interrogatory No. 37.

39. Please attach hereto copies of all regulations, orders, rulings, approvals and interpretations regarding your manner of operation of the Arkansas Ordnance Plant as respects to the Fair Labor Standards Act of 1938, as amended:

Answer: 39. Instructions regarding operation of the Arkansas Ordnance Plant were given Ford, Bacon & Davis, Inc., by the Ordnance Department through the Commanding Officer of the Arkansas Ordnance Plant. It was the opinion of the contractor that the employment and payment of employees at the Arkansas Ordnance Plant were not in violation of the Fair Labor Standards Act. The Department of Labor normally took up matters concerned with the operation of the plant with the Ordnance Department and not with the contractor. There is attached as Exhibit "L" a photostat of a letter furnished the defendant by the Ordnance Department.

[fol. 185] 40. Is it not true that the War Labor Board issued its General Order No. 31 requesting Ford, Bacon & Davis, Inc., as Operators of the Arkansas Ordnance Plant,

among others, to submit its wage plan for consideration and approval?

Answer: 40. The defendant is unable to find in its records a copy of General Order No. 31 of the War Labor Board. A copy of said order as amended is attached as Exhibit "M".

41. If the answer to the above interrogatory is in the affirmative, please attach a copy of said General Order No. 31 of the War Labor Board hereto as an exhibit.

Answer: 41. See answer to Interrogatory No. 40.

42. Is it not true that Ford, Bacon & Davis, Inc., as Operators of the Arkansas Ordnance Plant submitted a wage plan to the War Labor Board in accordance with the provisions of General Order No. 31 of the War Labor Board?

Answer: 42. According to the records, it appears that a wage plan was probably prepared and submitted through channels under General Order No. 31 of the War Labor Board. A search of the records has been made, but no copy of the plan or of the letter of submission was found. The submission, if any was made, would probably have been to the Commanding Officer of the Arkansas Ordnance Plant, and not direct to the War Labor Board.

43. If the answer to the above interrogatory is in the affirmative, please attach hereto a copy of said General Order No. 31 of the War Labor Board and also attach a copy of the letter of submission of the Plan to the Board.

Answer: 43. See answer to Interrogatory No. 42.

44. Were there not staff meetings of the officials, usually of department heads, of Ford, Bacon & Davis, Inc., held regularly?

Answer: 44. Yes.

45. Was there not a staff meeting of Ford, Bacon & Davis, Inc., held on or about March 22, 1944? If so, attach a copy of the report of said staff meeting.

Answer: 45. Yes. A copy of the minutes of said meeting is attached as Exhibit "N".

W. F. WHITTLE

GERLAND P. PATTEN

Atty. for Plaintiffs.

Subscribed and sworn to before me this 7th day of August, 1947.

EVA LASTER,

Notary Public.

(Seal)

My commission expires August 9, 1947.

[fol. 2] Exhibit "A"

Exhibit "A" is a list of ordnance establishments of the United States Army containing the name of the establishment, its code letters, the address and telephone number, the function of the establishment, and the name of the commanding officer. The following is an example. it is deemed unnecessary to set forth the entire list.

Aberdeen Proving Ground—SPOBG—Aberdeen, Md.
Telephone, 252. Proof of equipment and ammunition.

Commanding General: Maj. Gen. Charles T.
Harris, Jr.

Exhibit "B"

Exhibit "B" is a list of ports of embarkation. The following is an example:

Boston Port Of Embarkation—SPTAB—Port Ordnance
Office

Army Base, Boston, Mass. Port Ordnance Officer,
Lt. Col. William L. Rich.

It is deemed unnecessary to copy the entire list, which contains six ports of embarkation and three subports of embarkation.

[fol. 3]

War Department
Arkansas Ordnance Plant
Little Rock, Arkansas

April 7, 1943

AOP No: 012/16297

Fenstermacher/1h

Subject: Tax Exemption Certificates for Federal Excise Tax.

Memo To: Mr. R. A. Morgan, General Manager Arkansas Ordnance Plant

1. In accordance with Ordnance Procurement Regulations, there is inclosed United States Government Tax Exemption Certificate No. W 718,685, issued in blanket form, and attached thereto W. D. Tax Form No. 1, executed Certificate of Authority of Contractor to issue tax exemption certificates.

2. There is also inclosed blanket form of Exemption Certificate to be used by the Contractor for Federal Tax Exemption purposes.

ROBERT A. KOHLOSS, JR.,
Lt. Col., Ord. Dept.,
Commanding

3 Incls.—a/s

cc—Mr. Chas. H. Harper, Jr.
Mr. Morton Prowler

[fol. 3a]

War Department
Arkansas Ordnance Plant
Little Rock, Arkansas

W. D. Tax Form No. 1

Authority of Contractor
To Issue Tax Exemption Certificates
(To be attached to a Form 1094 U. S.
Tax Exemption Certificate).

Ford, Bacon & Davis, Inc.
(Name of Contractor)

Contract No. W—ORD-519
DA-W-ORD-6

Arkansas Ordnance Plant,
Jacksonville, Arkansas.
(Address of Contractor).

Tax Exemption Certificate
NO W 718,685

The contractor is authorized to issue tax exemption certificates in the form prescribed by Section 470.3(b) of Treasury Decision 5114, approved January 27, 1942 (7 Fed. Reg. 579, January 29, 1942) as to all articles sold on a Federal tax exclusive basis and for which payment is made by the United States, directly or by reimbursement of the contractor, and which are used by the contractor as equipment, material or supplies in performing the contract to which this (the attached) certificate pertains.

ROBERT A. KOHLOSS, JR.
(Contracting Officer Representative)

Lt. Col., Ord. Dept.,
(Title)

Exhibit "C"

[fol. 3b] Form to Be Used As Exemption
Certificate by the Contractor
Exemption Certificate

.....19....
Date

The undersigned hereby certifies that the articles specified in the accompanying order or on the reverse side hereof are purchased from

(Name of vendor)

for the United States under Government contract.....

.....; that he now has in
(Number or other identification)

his possession a certificate of exemption furnished by the United States with respect to such contract; and that such certificate authorizes him to issue this exemption certificate.

It is understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than \$10,000, or to im-

prisonment for not more than five years, or both, together with costs of prosecution.

.....
(Name)

.....
(Address)

(End of Exhibit C)

[fol. 4]

Exhibit "D"

Exhibit "D" is omitted as immaterial.

[fol. 5]

Exhibit "D-1/2"

War Department
Ordnance Inspection Section
Arkansas Ordnance Plant
Jacksonville, Arkansas

Shaffer:mle
August 17, 1942

Inspection Section
Circular Number 3

To: All Ordnance Inspectors

1. It has come to the attention of this office that some 140,000 M20 Detonators were sent to the Above Ground Magazine Storage Area which had not been properly inspected; in that they had powder on the closing discs. It is the duty of each Line Inspector to keep a record of all acceptable lots leaving the line. It is understood that in order to keep from over-stocking the line with finished detonators, lots are often moved prior to the signing of the line warehouse transfer. Without a record, the Line Inspector's signature has no value. Some lots may be moved without the knowledge of the Line Inspector. The Line Inspector should definitely understand that his signature on the line warehouse transfer indicates that he is accepting the lot as far as the inspection on the line is concerned, exclusive of tests. If these instructions are followed, detonators with powder on the discs or other defects will not get to the Above Ground Magazine Storage Area or be shipped from the plant.

2. Ordnance Department drawings are made with unilateral tolerance. As an example, the weight of charge for the AN-M103 Relay is given as 57.4 milligrams lead azide. This does not mean that the scales should be set at 57 milligrams, but rather that a point in the middle of the tolerance should be selected. In other words, the scale should be set at 55 milligrams so that a variation over and under can be permitted. It is understood that there has been some confusion and misunderstanding on the Detonator Lines concerning the interpretation of this tolerance.

3. Arrangements have been made for transportation of Ordnance static tests samples by the Contractor. When samples to be tested on a different line are ready to go to that line, the Ordnance Line Inspector should, during the day, request transportation by calling Station 311; at night, Station 312. At the same time he should call the line to which the samples are being sent so that the Ordnance Inspector on that line will be ready to receive the samples.

W. M. SHAFFER

1st Lt., Ord. Dept.

Army Inspector of Ordnance

[fol. 5a] All Communications Should Be Accompanied By Carbon Copy and Addressed to Commanding Officer

Plant on Highway 67
15 Miles Northeast
of Little Rock

Post Office, Telegraph, and
Express Address:

Little Rock, Arkansas

To Insure Prompt Attention
In Replying Refer to

Freight Address

Arkansas Ordnance Plant

.....No.....

Jacksonville, Arkansas

Attention of

Telephone:

War Department Little Rock 4-3392

Arkansas Ordnance Plant

Little Rock, Arkansas

Teletype:

Jacksonville, Ark. 363

Frisch/dlw
August 18, 1942

Memorandum to: Traffic Department
Arkansas Ordnance Plant
Jacksonville, Arkansas

Subject: Transmittal of Circular No. 3.

Attention: Mr. G. P. Charles

1. Attached hereto is a copy of Ordnance Inspection Circular No. 3, which has been sent to all Ordnance Inspectors.

2. Paragraph three (3) of this Circular gives in detail the procedure for handling the transfer of Static and Ballistic Samples which will be adhered to by our department.

L. L. FRISCH

Sr. Insp., Powder & Explosives
Ordnance Department

FORD, BACON & DAVIS, INC.

ARKANSAS ORDNANCE PLANT
JACKSONVILLE, ARKANSAS

No. 231

PAYROLL AUTHORIZATION

☒ REPORTS OF HIRE
☐ CHANGE OF STATUS

DATE June 12, 1944

BADGE NUMBER	EMPLOYEE NAME	FROM RATE	TO RATE	EFFECTIVE DATE
346 HELPER MAINTENANCE				
12677	NATHANIEL LEWIS	346	56	60944
31867	EARL J. MORROW	346	56	60944
35450	BARLEY A. WHEATLEY	346	56	60944
35464	JOHN R. WHITAKER	346	56	60944
35474	WALTER W. WILD	346	56	60944
35476	THOMAS O. WESLEY	346	56	60944
369 INSPECTOR				
7320	DOVIE ARNOLD	369	59	60944
22801	ALTA SUE INKERSOLL	369	66	60944
421 JANITRESS				
35486	ALBONIA JONES	421	40	60944
35487	MOORE MCINNIS	421	40	60944
35488	MATILDA HAGEN	421	40	60944
35489	ESTELLA E. MARTIN	421	40	60944
430 LABORER				
12830	ALF. BOSLEY	430	51	60944
769 TYPIST				
35513	ELIZABETH B. WILSON	769	2500	60944
771 OPERATOR PRODUCTION				
154	EULA D. WICHAU	771	66	60944
3018	IDA MAE HUFFMAN	771	62	60944
6033	GEORGE NIGHTOWEN	771	56	60944
8369	MARY P. HUTCHINS	771	66	60944
8789	ALBERT J. BROWN	771	62	60944
14288	LOUCE BOVELL	771	56	60944

430 LABORER				
12830	ALF. BOSLEY	430	51	60944
769 TYPIST				
35513	ELIZABETH B. WILSON	769	2500	60944
771 OPERATOR PRODUCTION				
154	EULA D. WICHAU	771	66	60944
3018	IDA MAE HUFFMAN	771	62	60944
6033	GEORGE NIGHTOWEN	771	56	60944
8369	MARY P. HUTCHINS	771	66	60944
8789	ALBERT J. BROWN	771	62	60944
14288	LOUCE BOVELL	771	56	60944
20196	REDA BUNGAARDNER	771	56	60944
22810	LADY N. LEWIS	771	56	60944
32120	ENNA N. MOORE	771	56	60944
34080	BEULAH WATKINS	771	56	60944
35461	GRACE ALICE ZERBE	771	56	60944
35462	ENNA JANE FRANKLY	771	56	60944
35466	REDA MAE BURCH	771	56	60944
14467	ROTHY N. HOPKINS	771	56	60944

Correct:

W. J. WHITTLE
Paymaster

For the General Manager:

J. T. BERRY
Assistant to the General Manager

APPROVED:

CHARLES G. TOLSON
Major, Ordnance Department
Contracting Officer's Representative

EXHIBIT "D-1"

EXHIBIT "D-2"

TRIPPLICATE ORDNANCE DEPT

PAGE 1 OF 3

FORD, BACON & DAVIS, INC.
ARKANSAS ORDNANCE PLANT
JACKSONVILLE, ARKANSAS

No. 1216

PAYROLL AUTHORIZATION

☐ REPORTS OF HIRE
☒ CHANGE OF STATUS

DATE June 10, 1944

ADDS NUMBER	EMPLOYEE NAME	OLD CODE	FROM RATE	NEW CODE	TO RATE	EFFECTIVE DATE
14 ADJUSTER MACHINE HELPER						
3146	MARIE GLUCK	771	66 14	66	60644	
28404	LINNEE E COOLEY	771	62 14	62	60644	
29415	JOE S BOWLING	346	56 14	56	60644	
33890	HERNIV D BECK	771	56 14	56	60744	
35145	LAUREL A STARNETT	771	56 14	56	60744	
77 CHECKER MATERIAL						
17457	WILLIAM W FORBUSH	640	4800 77	3200	60644	
127 CLERK						
15241	LUNA H CHANEY	514	2500 127	2500	60644	
310 FOREMAN GENERAL LINE						
405	ETHELDA ALMOND	432	81 310	4500	60544	
325 GUARDS						
1570	HOYT N ABBOTT	770	89 325	3500	60644	
346 HELPER MAINTENANCE						
20236	LEONARD FRANKLIN	430	59 346	52	60544	
33703	WILLIAM J TALBENT	430	51 346	56	60544	
35065	JAMES CARL ROBERTS	567	56 346	56	60644	
35119	FRED J CALLAHAN	567	56 346	56	60644	
35120	BILLY J SCROGGS	567	56 346	56	60644	
35121	MARION L COOK	567	56 346	56	60644	
35123	CHARLES C LUDWICK	567	56 346	56	60644	
35128	MIRAN S HODGEN	567	56 346	56	60644	
35130	BILLY J HARDEN	567	56 346	56	60644	

405	ETHELDA ALMOND	432	81 310	4500	60544	
325 GUARDS						
1570	HOYT N ABBOTT	770	89 325	3500	60644	
346 HELPER MAINTENANCE						
20236	LEONARD FRANKLIN	430	59 346	52	60544	
33703	WILLIAM J TALBENT	430	51 346	56	60544	
35065	JAMES CARL ROBERTS	567	56 346	56	60644	
35119	FRED J CALLAHAN	567	56 346	56	60644	
35120	BILLY J SCROGGS	567	56 346	56	60644	
35121	MARION L COOK	567	56 346	56	60644	
35123	CHARLES C LUDWICK	567	56 346	56	60644	
35128	MIRAN S HODGEN	567	56 346	56	60644	
35130	BILLY J HARDEN	567	56 346	56	60644	
35139	LLOYD H NEES	567	56 346	56	60644	
35140	VERNON L CURD	567	56 346	56	60644	
35147	SAUND H WANNING	567	56 346	56	60644	
35171	VERNON R SPENCER	567	56 346	56	60644	
35183	CHARLES K JORDAN	567	56 346	56	60644	
35185	VIROCK HELLAN	567	56 346	56	60644	

369 INSPECTOR

CORRECT

W.F. WHITTLE
Paymaster

For the General Manager:

J.T. BERRY
Assistant to the General Manager

APPROVED

CHARLES G. TOLSON
Major, Ordnance Department
Contracting Officer's Representative

EXHIBIT "D-2"

W. Edwards

LICENSED FOR USE UNDER PATENT 1,772,483

Y-OVER 80		NAME OF EMPLOYEE	
6-7		6-7	
NEW CLOCK NO.		NAME OF EMPLOYEE PLEASE PRINT	
40.0		RALPH BRIDGES	
REGULAR HOURS	AREA	BADGE NO.	NEW
40.0	10	3204	
OVERTIME HOURS	COMPUTED		FS & S
TOTAL HOURS	APPROVED		OR PHANCE
40.0			
CASE	NAME OF EMPLOYEE	FOR FINGER NO. DAY	SEC- FINGER
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31			EMPLOYEE NO. AREA BADGE NO.

10M 750860 P.M. 601 REV. 2

400 101 LICENSED FOR USE OTHER THAN 1,775 400

Duplicate Card To
Replace Lost Card For
Week Ending 6-7-42. See
Weekly Time Record For
Working Time. See Back
Approved — C

1
1
8
8
8
6
8

[illegible]

Records kept by Government timekeepers in the clockhouse substantiate this time

Edwards

[fol. 10]

Exhibit "E"

Ordnance Procurement Instructions

9,101.1 Statement of Labor Policy Dated June 22, 1942.

The War and Navy Departments on June 22, 1942, issued a Statement of Labor Policy governing Government-owned, privately-operated plants, the backbone of the Nation's armament program. Under the terms of the Congressional mandate by which their construction and operation was authorized, the War and Navy Departments were given the option of themselves operating the plants or of operating them through the agency of selected qualified commercial contractors. The War Department chose the latter course and in doing so created industrial units of a novel and peculiar character. They have many significant features which combine to form a unique relationship between the operating contractor and the War Department and consequently the handling of many problems, including that of labor relations, must necessarily be slightly different than in the case of wholly private plants. The primary responsibility for dealing with problems relating to the employment of labor is with the contractor since he is hired for the express purpose of utilizing his skill and experience in running the plant and taking care of all questions of personnel. Because of the relationship which obtains, however, the War Department has the responsibility to see that each plant is operated in accordance with all laws and Executive Orders, and in such a manner as to provide for the safety and protection of the plant and its personnel, and to insure maximum production at a reasonable cost. The various provisions of the Statement of Labor Policy, dated June 22, 1942, are referred to in the provisions of this section which follow.

[fol. 11]

Exhibit "F"

Ordnance Procurement Instructions

9,102. Responsibility of Contractor Personnel Branch.

The Contractor Personnel Branch has been assigned the responsibility of administering the Labor Policy as it affects the Ordnance Department. The Contractor Personnel Branch is charged with:

a. Assisting Commanding Officers and contractors with respect to labor relations problems.

b. Acting as liaison for the Ordnance Department with appropriate Government agencies having labor relations responsibility.

c. Passing upon collective bargaining agreements to determine whether same comply with the Labor Policy.

d. Passing upon interim grievance procedures submitted under OPI 9,104.3.

f. Assisting commanding officers and contractors to clarify the application of National Labor Relations Act, Walsh-Healey Act, Fair Labor Standards Act, Davis-Bacon Act, Copeland "Anti-Kick Back" Act, and other Federal statutes dealing with wages, hours, or conditions of employment.

g. Assisting commanding officers to conduct hearings requested under Section 5 (b) of the Labor Policy on petitions with respect to discharges directed by them in the interest of plant security. (See OPI 9,105.2).

[fol. 12]

Exhibit "G"

Ordnance Procurement Instructions

9,107.1 War Department Responsibility.

The War Department has contractual responsibility for the approval of pay-roll costs. Thus, notwithstanding approvals by the War Department Wage Administration Agency under the Executive Orders and statute dealing with national wage and salary stabilization, approvals by the contracting officer's representatives are also required for purposes of reimbursement of expenditures made pursuant to initial wage and salary scales and any adjustments therein, save only of such individual adjustments within established and approved wages and salary ranges as are permitted without approval pursuant to OPI 9,107.3 and OPI 9,107.4 (not including individual adjustments in salaries in excess of \$6,000 covered by OPI 50,006.1).

[fol. 13]

Exhibit "H"

Exhibit "H" is a seven-page exhibit and is not set forth in full. It appears from the exhibit that Ford, Bacon & Davis, Inc., desired to eliminate 56 job classifications at the Arkansas Ordnance Plant and to substitute in lieu thereof ten new job classifications. The jobs to be eliminated were various classifications of truck and passenger car drivers and various classes of inspectors, leaders, and machine operators, all of them being hourly paid jobs drawing rates ranging from 40¢ an hour to \$1.15 an hour. It was proposed to consolidate these 56 job classifications into ten new job classifications. As an example, truck and passenger car drivers would have two classifications, to-wit, first-class and second-class, in lieu of a number of original classifications, depending upon the type of equipment driven. Exhibit "H" reflects the procedure necessary to be followed in order to secure the desired changes.

The exhibit reflects that in the first instance the Commanding Officer at the Plant gave an emergency approval, then forwarded the matter to the Field Director of Ammunition Plants, at St. Louis, Missouri, who in turn forwarded it to the office of the Chief of Ordnance at Washington. The Office of Chief of Ordnance forwarded it, with its recommendation, to the War Department Wage Administration Agency for final determination. This agency approved the request, which approval was transmitted through channels to the Commanding Officer of the Arkansas Ordnance Plant.

[fol. 14].

Exhibit "I"

War Department
Arkansas Ordnance Plant
Little Rock, Arkansas

November 26, 1942

AOP No. 248.3/12028

Memorandum To: Mr. R. A. Morgan, General Manager,
Arkansas Ordnance Plant,
Jacksonville, Arkansas.

Subject: National War Labor Board General
Order No. 14.

1. Attached hereto is telegraphic copy of General Order No. 14 issued by the National War Labor Board, dealing

with wage and salary adjustments requiring prior War Labor Board approval.

2. Your attention is invited to the fact that the National War Labor Board now delegates to the Secretary of War, to be exercised on his behalf by the Wage Administration Section within the Civilian Personnel Division, Headquarters, Services of Supply, hereinafter referred to as the War Department Agency, the power to rule upon all applications for wage and salary adjustments affecting the employees at this Plant insofar as approval hereof has been made a function of the National War Labor Board.

3. Your attention is further invited to the fact that all requests or problems pertaining to wage or salary adjustments are to be submitted to the Commanding Officer and, where his authority is not sufficient to apply, same shall be channeled to higher authority in accordance with previously issued instructions.

ROBERT A. KOHLOSS, JR.,
Lt. Col., Ord. Dept.,
Commanding.

1 Incl.
As stated.

[fol. 15]

Exhibit "J".

Ark. Ord. Plant

248.21

Dec 11 1941

O.O. 675/22104 Arkansas O.P.

Att: Amm. Div.—Ind. Serv.

248/292

1st Ind.

Hampton/jim

War Department, Ordnance Office, Washington, D. C.,

December 4, 1941

To: Commanding Officer, Arkansas Ordnance Plant,
Little Rock, Arkansas

1. The chart of proposed salary ranges for the operation of Arkansas Ordnance Plant, prepared by Ford, Bacon & Davis, Inc., has been reviewed.

2. Although the approval of this office is not required for salaries under \$6000 per annum, it being a responsibility of the contracting officer's representative to approve salaries under this figure at rates believed to be reasonable and in agreement with salaries paid elsewhere for the same or comparable work, it is suggested that some rates under \$6,000 per annum appear high; therefore, it is recommended that the subject of salaries for operating personnel be further discussed with the contractor's representative. At a leading plant the range for Employment Manager is \$4200 to \$4500 per annum and for Employee Training Supervisor it is \$3000 to \$3600 per annum. The salary range on the chart for Employment Manager is \$4800 to \$5400 per annum and for Employee Training Supervisor the range is \$3000 to \$4800 per annum. Under Personnel Group, a Director is proposed at a minimum salary of \$6000 per annum and an Industrial Relations Manager at a range of \$4800 to \$5400 per annum. It is believed the rate of Personnel Director, (that is, \$6000) is reasonable and, therefore, is approved. However, the necessity for an Industrial Relations Manager at a range of \$4800 to \$5400 per annum is not quite clear.

3. It is the purpose of this office to approve salaries of personnel of the contractor, over \$6000 per annum which within a reasonable range. However, in several instances the salary proposed is out of range with salaries in effect at other plants under this Division. It is, of course, understood that for the present the maximum salary for General Manager is \$12,000 per year, which rate is hereby approved. The necessity for a Technical Consultant at a minimum salary of \$10,000 per year, as well as a Technical Director at a minimum of \$6,000 per year, is not clear, and, therefore, additional information is desired as to the duties to be performed by these persons. On the chart is noted that the Technical Consultant is an assistant to the General Manager.

4. This office is in agreement with the statement in paragraph 2 of basic letter that the proposed range for Cafeteria Manager, namely, \$6,000 to \$8,000, is excessive. At present, there is no record in this office to show what salary is being paid at other operating plants for Cafe

101905		MARY L EAKERS	
JOUR E		NAME OF EMPLOYEE	
15732	793	0726	62
CLOCK NO.		NAME OF EMPLOYEE (PLEASE PRINT)	
40			
OVERTIME HOURS	COMPUTED	F&B	
8	H. Stewart		
TOTAL HOURS	APPROX	ORDNANCE	
48	Cory - Store		
NAME OF EMPLOYEE		FOR F&B	EMPLOYEE NO.
		NO. EMP	AREA - BARGE NO.
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25			

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Σ 7.30	Σ 7.20	Σ 7.10	Σ 7.00	Σ 7.30	Σ 7.15	
Σ 22.58	Σ 22.52	Σ 22.54	Σ 22.50	Σ 22.50	Σ 22.50	
Σ 22.16						
8	8	8	8	8	8	8
W	C	C	C	C	C	C
Σ 157.32						

15732 793 0726 62

40

8

48

H. Stewart

Cory - Store

Σ 7.30 Σ 7.20 Σ 7.10 Σ 7.00 Σ 7.30 Σ 7.15

Σ 22.58 Σ 22.52 Σ 22.54 Σ 22.50 Σ 22.50

Σ 22.16

8 8 8 8 8 8

W C C C C C

Σ 157.32

teria Manager. However, the rate paid at other plants must be less than \$6,000 per year, otherwise the prior approval of this office would have been required. It is suggested that inquiry be made of other plants to ascertain the salary paid for Cafeteria Manager and a report furnished this office.

[fol. 16]

Exhibit "K".

Ark Ord Plant

248.3/10477

Oct 21, 1942

October 21, 1942

Subject: Procedure Re: Salaries and wages of Supervisory and Non-Supervisory Personnel

To: Mr. R. A. Morgan, General Manager
Arkansas Ordnance Plant
Jacksonville, Arkansas

1. Reference is made to your memorandum on the above subject, dated October 13, 1942, outlining the policy which was established in connection with the Wage Rate Classification Schedule of August 16, 1942, concerning advancement in wages and salaries to qualified employees. Inasmuch as operations have now proceeded to a point where qualified operators merit advancement, it is considered appropriate that this policy be definitely outlined at this time.

2. It is noted on Page 1, paragraph 1 (a), that increases within a classification will be based on merit only. It is assumed that this policy has been adopted in place of the procedure whereby the first wage increase is based solely on length of service and any others solely on merit.

3. It is understood that in effectuating the procedure outlined in your memorandum, the effective date of all increases and/or changes of classification will be current, and in no event, made retroactive.

4. Paragraph 1 (b) on Page 1 indicates that a ninety-day period is the minimum time for an increase within classification. In this connection it is believed that emphasis should be based upon the fact that the minimum elapsed time is only one qualification for promotion. At the

end of ninety days, a person may be considered for promotion, but the final criterion is the responsibility of the job and the manner in which it is being performed, subject to final approval of the Commanding Officer.

[fol. 17]

Exhibit "L".

U. S. Department Of Labor

Wage And Hour And Public Contracts Divisions

Washington, D. C.

October 11, 1943

In Reply Refer To:

AD:JBM:zls

Oct 13, 1943

Lt. Col. Wm. J. Brennan, Jr.
Chief, Labor Section
Office of the Chief of Ordnance
War Department
Room 1E-520, Pentagon Building
Washington, D. C.

Re: Two-Platoon System for Firemen at
Arkansas Ordnance Plant

Dear Colonel Brennan:

This will reply to your letter dated October 7, 1943, with which you forwarded further correspondence from the commanding officer of the subject project which changes somewhat the plan as proposed earlier and as described in my letters to you dated July 19 and August 16, 1943.

As I understand it now, each fireman will be on a 24-hour tour of duty on three days each week and during each such tour of duty the last eight hours will be free time in which they will be permitted to sleep or do whatever else they desire, except that it will be necessary that they remain at the fire station in order to be available should an alarm be turned in. No payment will be made for these last hours unless the men are called to duty to answer an alarm, in which event they will be paid at straight time for such time, or at time and one-half provided that they have already accumulated the regular 40 hours at the straight time rate.

In any event it is proposed to pay the men a time and one-half allowance for all hours actually worked in excess of 40 in any one week.

I further understand that the arrangement is mutually satisfactory to the employees and the employer. It appears, therefore, to be unobjectionable and the payment to employees in accordance with the plan would not appear to be violative of the Fair Labor Standards Act.

Very truly yours,

WM. R. McCOMB,
Deputy Administrator.

[fol. 18]

Exhibit "M".

Exhibit "M" is omitted as immaterial.

Exhibit "N".

Exhibit "N" is omitted as immaterial.

(Endorsed): No. 13,660. Stipulation relating to Exhibits attached to Responses to Interrogatories, and Exhibits attached thereto. Filed in U. S. District Court on January 19, 1948.

[fol. 20] (Order of United States Circuit Court of Appeals denying Petition of Appellee to require Appellants to print Additional Record, etc.)

United States Circuit Court Of Appeals
Eighth Circuit

January Term, 1948.

Monday, January 12, 1948.

Julia Rhoda Aaron, etc., et al., Appellants,

No. 13,660. vs.

Ford, Bacon & Davis, Incorporated.

Appeal from the District Court of the United States for the Eastern District of Arkansas.

Motion and amended motion of appellee to require appellant to print additional record is this day presented to the

Court by Mr. E. L. McHaney, Jr., and the response of appellant thereto by Mr. Gerland P. Patten, and after due consideration, It is ordered by the Court that said motion and amended motion be, and they are hereby, denied, without prejudice however to appellee to print such additional record as it may be advised is necessary.

January 12, 1948.

[fol. 3] And thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Eighth Circuit, viz:

(Appearance of Counsel for Appellants.)

Julia Rhoda Aaron, et al., Appellants,

No. 13,660. vs.

Ford, Bacon & Davis, Inc.

The Clerk will enter my appearance as Counsel for the Appellants.

GERLAND P. PATTEN,

COOPER JACOWAY,

C. H. EARLE,

JUNE P. WOOTEN,

Pyramid Building,

Little Rock, Arkansas.

PAUL TALLEY,

WAYNE W. OWEN,

Rector Building,

Little Rock, Arkansas.

(Endorsed): Filed in U. S. Circuit Court of Appeals,
Nov. 22, 1947.

(Appearance of Counsel for Appellee.)

The Clerk will enter my appearance as Counsel for the Appellee.

GROVER T. OWENS,

JOHN M. LOFTON,

E. L. McHANEY, JR.

(Endorsed): Filed in U. S. Circuit Court of Appeals,
Dec. 1, 1947.

[fol. 4] (Appearance of Counsel for Amicus Curiae, Administrator, Wage and Hour Division, U. S. Department of Labor.)

The Clerk will enter my appearance as Counsel for the Amicus Curiae, Administrator, Wage and Hour Division, U. S. Department of Labor.

JETER S. RAY.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Mar. 3, 1948.

(Order of Submission.)

November Term, 1948.

Monday, November 8, 1948.

Before Judges Gardner, Sanborn, Woodrough, Thomas, Johnsen, Riddick and Collet.

This cause having been called for hearing in its regular order, argument was commenced by Mr. June P. Wooten for appellants, continued by Mr. E. L. McHaney, Jr., for appellee and concluded by Mr. June P. Wooten for appellants.

Thereupon, this cause was submitted to the Court in banc on the record printed by appellants, the supplemental record printed by appellee and briefs of counsel and amicus curiae, the supplemental memorandum of amicus curiae and by way of supplemental brief appellee filed the brief of Owens, et al., as Amicus Curiae in the Supreme Court of the United States in the case of Kennedy, et al. v. Silas Mason Company.

United States Court of Appeals
For The Eighth Circuit.

No. 13,660.

Julia Rhoda Aaron and all other
Plaintiffs and Interveners
listed in the Complaints and
Interventions in the District
Court in Civil Action No. L. R.
1584 Consolidated,

Appellants,

vs.

Ford, Bacon & Davis, Incorporated,

Appellee.

Appeal from the
United States Dis-
trict Court for the
Eastern District of
Arkansas.

[April 12, 1949.]

Mr. June P. Wooten (Mr. Josh McHughes, Mr. Lee Caz-
zort, Jr., Mr. Charles H. Earl, Mr. Paul Talley, Mr.
Wayne W. Owen, Mr. Cooper Jacoway, and Mr. Ger-
land P. Patten were with him on the brief) for Ap-
pellants.

Mr. E. L. McHaney, Jr. (Mr. Grover T. Owens, Mr. John
M. Lofton, Jr., and Messrs. Owens, Ehrman & Mc-
Haney were with him on the brief) for Appellee.

Mr. William S. Tyson, Solicitor, Miss Bessie Margolin,
Assistant Solicitor, Mr. William A. Lowe and Mr. E.
Gerald Lambole, Attorneys, and Mr. Reid Williams,

Regional Attorney, United States Department of Labor, filed brief as Amicus Curiae.

Before GARDNER, Chief Judge, and SANBORN, WOODROUGH, THOMAS, JOHNSEN, RIDDICK, and COLLET, Circuit Judges.

COLLET, Circuit Judge, delivered the opinion of the Court.

This action constitutes a consolidation of seven separate actions against the defendant, Ford, Bacon & Davis, Inc., filed by more than 1800 of its employees in the District Court for the Eastern District of Arkansas claiming in excess of one million dollars in overtime compensation, liquidated damages, and attorney fees under the Fair Labor Standards Act of 1938.¹ Ford, Bacon & Davis, Inc., operated the Government-owned Arkansas Ordnance Plant in Pulaski County, Arkansas, under a cost-plus-a-fixed-fee contract with the Government for the production of munitions of war for Government use in World War II. This consolidated cause was submitted to the District Court on motion for summary judgment. At the hearing on that motion it was stipulated that the motion raised no disputed issues of fact. The motion was sustained. The District Court filed as its memorandum opinion in this case its opinion in the previously determined similar case, *Barksdale v. Ford, Bacon & Davis, Inc.*, reported in 70 Fed. Supp. 690. Many of the same issues were presented to the trial court in this case as were presented in the trial court in *United States Cartridge Co. v. Powell, et al.*, No. 13,663, decided on this date, F.2d On the appeal in this case the same determinative questions were presented in this court as were presented on appeal in the Powell case. This case, like the Powell case, was held under submission awaiting a decision of the case of *Kennedy v. Silas Mason*

¹29 U.S.C.A. Sec. 201 et seq.

by the Supreme Court. Upon the remand of *Kennedy v. Silas Mason*, 334 U.S. 249, the previous submission of this case was set aside and this cause was set for rehearing and reargument before this Court en banc with the Powell case. The Powell case has, as indicated above, been decided by our opinion filed today. The substantive issues are the same in this and the Powell case. Our opinion in the Powell case is therefore controlling here. For the reasons stated in that opinion, the order of the District Court dismissing plaintiffs' complaints is affirmed.

[fol. 9]

(Opinion)

United States Court of Appeals
for the Eighth Circuit.

No. 13,663.

The United States Cartridge
Company, a corporation,

Appellant,

vs.

R. M. Powell, et al.,

Appellees.

Appeal from the
United States Dis-
trict Court for the
Eastern District of
Missouri.

[April 12, 1949.]

Mr. R. H. McRoberts (Mr. Rhodes E. Cave, Mr. Marion S. Francis, and Messrs. Bryan, Cave, McPheeters & McRoberts were with him on the brief) for Appellant.

Mr. Thomas Bond for Appellees.

Mr. William S. Tyson, Solicitor, Miss Bessie Margolin, Assistant Solicitor, Mr. William A. Lowe and Mr. E.

Gerald Lamboley, Attorneys, and Mr. Reid Williams, Regional Attorney, United States Department of Labor, filed brief as Amicus Curiae.

Before GARDNER, Chief Judge, and SANBORN, WOODROUGH, THOMAS, JOHNSEN, RIDDICK, and COLLET, Circuit Judges.

COLLET, Circuit Judge, delivered the opinion of the Court.

This is an action brought by a group of fifty-nine plaintiffs who were employed during World War II at the St. Louis Ordnance Plant to recover overtime compensation, liquidated damages, attorney fees, and costs, under the Fair Labor Standards Act of 1938. On trial the court found all the issues in favor of plaintiffs and entered judgment aggregating \$246,251.44 (twice the amount of overtime claimed), plus \$24,625.00 as attorney fees and costs. The parties will be referred to as they were designated in the District Court.

Defendant was engaged in the operation of a large munitions plant near St. Louis, Missouri, manufacturing small arms ammunition for use by the military forces of the United States under a cost-plus-a-fixed-fee contract with the United States and under the supervision of the Ordnance Department of the War Department. It is admitted by the pleadings that plaintiffs were all employees of defendant. Plaintiffs allege that defendant was engaged in interstate commerce and in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938,¹ and that they were employed in the production of goods for interstate commerce at agreed salaries for a 40-hour week, with the understanding that for all hours which they worked over 40 per week they

¹29 U.S.C.A., Sec. 201 et seq.

would be compensated at the rate provided by that Act of one and one-half times the regular rate of pay. Plaintiffs were all employed in defendant's Safety Department.

Defendant denied and still denies that it was engaged in interstate commerce or in the production of goods for interstate commerce, denied that plaintiffs were so employed or at agreed salaries for a 40-hour week or that they were entitled to overtime pay for time worked in excess of 40 hours per week. The defendant alleged and continues to contend that each of the plaintiffs was employed in a bona fide administrative capacity as that term is defined in the Fair Labor Standards Act with the result that that Act did not apply with respect to them. The defendant furthermore set up certain provisions of the Missouri Statute of Limitations as an affirmative defense. After judgment was entered a motion for rehearing was filed, requesting among other things that the cause be reopened to permit defendant to plead and prove the defenses made available to it under the Portal-to-Portal Act, which had become effective subsequent to the trial and shortly prior to the judgment. This motion was accompanied by an affidavit stating certain facts deemed relevant to those defenses. Plaintiffs answered this affidavit with a counter affidavit. The motion was denied. This appeal followed. We held the case under submission pending the determination of *Kennedy v. Silas Mason Co.*, 334 U.S. 249 (1948) because of the similarity of certain important issues in both cases. Upon the remand of the *Kennedy-Silas Mason* case we set aside the submission of this cause and set it for re-argument before this court en banc. The parties were granted leave to file supplemental briefs particularly directed to the applicability, if any, of either the Fair Labor Standards Act of 1938, *supra*; the Act of July 2, 1940, 54 Stat. 712, 50 U.S.C.A. App., Sec. 1171, 1172, and 5 U.S.C.A., Sec. 189(a); or the Walsh-Healey Public Contracts Act of June 30, 1936, 49 Stat. 2036, 41 U.S.C.A., Sec. 35 et seq.

Pursuant thereto the cause was re-argued and supplemental briefs bearing upon the applicability of the above-mentioned Acts were filed.

Defendant contends (1) that plaintiffs were not engaged in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act, and were not included within the coverage of that Act, (2) that it was not engaged in interstate commerce or in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act, (3) that the ammunition produced by defendant for the United States was for use in the war and was not "goods" within the meaning of that Act, (4) that plaintiffs were not engaged in interstate commerce or in the production of goods for commerce, (5) that the burden was on plaintiffs to plead and prove the coverage of the Act, the hours worked, and that they were engaged in the production of "goods" as defined in the Fair Labor Standards Act, which burden was not sustained, (6) that plaintiffs were employed in a bona fide administrative capacity and were exempt from the provisions of the Fair Labor Standards Act, (7) that the judgment of the trial court is in any event excessive in that it (a) is based on the erroneous assumption that the salaries paid plaintiffs were base pay for a 40-hour week instead of a variable or 48-hour week, (b) includes in the computations of hours worked a one-half hour lunch period, and (c) includes as hours worked, time prior to the beginning of and following the ending of plaintiffs' regular work shifts, (8) that the claims of certain plaintiffs were barred by Sections 1012 and 1015 R.S. Mo. 1939, (9) that the provisions of the Portal-to-Portal Act of 1947 are binding in this case and defendant should have been given the opportunity to plead and sustain the defenses made available to it under the Act, and (10) that two of the plaintiffs died while the cause was under submission and there has been no proper substitution and revival.

The trial court found that defendant was engaged in interstate commerce and in the production of goods for commerce within the meaning of the Fair Labor Standards Act and gave judgment for plaintiffs under that Act, including, as heretofore noted, the overtime claimed, liquidated damages, and attorney fees. ~~Apparently the possible applicability of the Walsh-Healey Act or of the Act of July 2, 1940, or the bearing of either of those Acts upon the applicability of the Fair Labor Standards Act was not presented to or considered by the trial court, but the question relates to jurisdiction and is properly before us.~~

There is no serious dispute concerning the underlying facts. Defendant entered into a cost-plus-a-fixed-fee contract with the United States Government to operate and maintain the munitions plant in suit and to produce therein and thereat small arms and ammunition in huge quantities for the United States Government. The Government acquired the site for the plant, erected all of the buildings and installed all of the machinery, to all of which it retained title. The Government furnished defendant with all raw materials or the funds with which to acquire them. The title to all raw materials and finished munitions remained in the Government. A large part of those materials were shipped to the plant from outstate, some by the Government and some on defendant's orders consigned to defendant. All those materials were unloaded at the plant by defendant's employees. Defendant manufactured those raw materials into arms and ammunition at the plant in Missouri. In doing so it had the actual physical possession of the material and products thereof, but all operations were under the direct supervision of representatives of the United States Government. All completed products were carefully inspected by the Government. And all of those products were shipped upon the order of the Government to places specified by it. Predominately, if not entirely, those destinations were beyond the confines of the State of

Missouri. Those shipments were usually on Government bills of lading, but occasionally they were made on defendant's bills of lading. All of the finished products with one exception were shipped at Government expense to points for use by it in the war. That exception consisted of small quantities of test ammunition sent to Purdue University and a point in Pennsylvania for test purposes. A by-product, scrap copper or brass, resulting from the making of shells, appears to have been transported in defendant's trucks to a nearby cartridge company on defendant's commercial bill of lading. This appears to be the only product resulting from defendant's manufacturing process which left the plant on other than Government bills of lading. The title to this by-product appears to have remained in the Government. All shipments from the plant were crated and loaded by defendant. Bills of lading and shipping papers were prepared by defendant's employees. The defendant by the terms of the contract was required to do all things necessary to the operation of the plant, to hire all employees, to inspect and check all materials by its own inspectors before submitting the goods to the Government for acceptance, to keep records and books of account showing the cost of all labor, material and other expenditures, to pay employee contributions under the Federal Social Security Act, and to pay all state and local taxes, licenses or fees required by state law, including state compensation laws. Extensive railroad switching facilities were constructed on the plant site (which was a military reservation). These facilities were also owned by the Government, as well as the switch engines and similar equipment. This equipment was stated by defendant to have been manned and operated by defendant's employees. The defendant was designated in the contract as an independent contractor² but the Government had, as heretofore noted,

²From the contract, page 780 of the Record:

"It is expressly understood and agreed by the Contractor and the Government that in the performance of the work provided for in this contract,

the right to make any changes its representatives deemed necessary in the method of performing the work and, as heretofore inferred, it paid all operating costs. Defendant's fixed fee was based upon the amount of the completed product produced. As many as 40,000 employees were at times engaged at the plant. All were engaged in the production of munitions for the Government under defendant's contract with the Government. More than six billion small arms cartridges were produced. The contract specifically provided that the provisions of the Walsh-Healey Act should apply to this contract.³ These plaintiffs, as well as all other employees of defendant, were notified in a booklet given them at the commencement of their employment that overtime would be compensated for at the rate provided under the Walsh-Healey Act and the Fair Labor Standards

the Contractor is an independent contractor and in no wise an agent of the Government."

³From the contract, page 783 of the Record:

"Article III-D—Walsh Healey Act.

"1. The following representations and stipulations pursuant to the Walsh-Healey Public Contracts Act (Act of June 30, 1936: 49 Stat. 2036; 41 USC 35-45), shall apply to the performance of this contract:

"(a) The Contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

"(b) All persons employed by the Contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account; not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: Provided, however, that this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

"(c) No person employed by the Contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

"(d) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the Con-

Act.⁴ The relationship between the Government and defendant in the operation of the plant was also described in this booklet.⁴ As noted heretofore, defendant's answer

tractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

"(e) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part hereof is to be performed shall be prima facie evidence of compliance with this subsection.

"(f) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original Contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or under-payments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered. Provided, that no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the United States of America.

"(g) The Contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

"(h) The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.00.

"2. Stipulation (b) of section 1 of this Article III-D with respect to wages is operative due to determination by the Secretary of Labor of prevailing minimum wage rates for the industry involved."

⁴From the booklet given employees, page 191 of the Record:

"The Saint Louis Ordnance Plant is wholly owned by the United States Government. The United States Cartridge Company is the operating agent."

From the booklet given employees, pages 203-204 of the Record:

admitted that plaintiffs were its employees. There was no issue presented concerning the propriety of the rate of pay under any Federal or State law. The controversy relates to whether the Fair Labor Standards Act applies, whether plaintiffs are within the class of employees entitled to overtime under the Act, and, if so, the extent of that overtime, whether liquidated damages and attorney fees are recoverable, and whether defendant should have been permitted to amend its answer setting up defenses under the Portal-to-Portal Act.

"Wages of Employees.

"It is the policy of the Saint Louis Ordnance Plant to pay each employee a wage in keeping with the rates determined by the Ordnance Department of the United States Army for ammunition production. Since our product is for our United States Government, and since each employee is a part of our government, it is naturally expected that each employee will strive diligently to turn out an honest day's work for a fair wage.

"The company pays you your wages but it is immediately repaid by the United States Government.

"In the final analysis, your wages come from the United States Government, whose only source of income is taxes collected from you and all other citizens.

"The United States Cartridge Company is merely managing the plant for the Federal Government.

"An employee's remuneration consists not only of the money he receives each payday, but also the Company's contribution to the Social Security, Workmen's Compensation for accident protection, and Unemployment Compensation funds."

From the booklet given employees, page 206 of the Record:

"Standard Hours of Work."

"There will be eight hours in any working day, and forty hours will constitute a working week. To meet the schedule required of us by the National Defense Program, it will be necessary to employ three shifts on production operations. When production demands require a longer work day, or longer work week, the Company will pay the legal overtime rate as provided under the Walsh Healey Act, and the Fair Labor Standards Act. When three shifts are operating there will be rotation of the first, second and third shifts every two weeks. A lunch period will be allowed on each shift and will be paid for by the Company, that is, no deduction will be made for this lunch period.

"Payment of Overtime.

"Time and one-half will be paid in excess of eight hours per day or forty hours per week. Time and one-half also is paid for authorized work on Sunday and national holidays, except in departments or occupations where the established schedule requires seven days continuous operations. This means that overtime is paid for Sunday work and holidays on repair, maintenance, mechanical and new routine process operations, but not for work

There are many cases bearing upon the problem with which we are confronted.⁵ No good purpose will be served by an analysis of each of them here, since it is obvious from the opinion of the Supreme Court in *Kennedy v. Silas Mason Company, supra*, that that court will in due time authoritatively determine the correctness of the various conclusions expressed in those cases.

As to the application of the Walsh-Healey Act. It is clear and undisputed that all of the articles manufactured by defendant were manufactured pursuant to a contract be-

such as watching, plant protection, or continuous procedure operations. The following national holidays—New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, will be observed.

"It will be the policy of the Company to avoid work on Sundays and Holidays as far as possible. However, since we are a part of the National Defense program, we shall have to adjust our schedule according to the needs of the situation."

⁵*Holland v. Haile Gold Mines*, 41 F. Supp. 611; *Walling v. Haile Gold Mines, Inc.*, 436 F.2d 102; *Fox v. Summit King Mines*, 113 F.2d 926; *St. Johns River Shipbuilding Company v. Adams*, 164 F.2d 1912, 13 Labor Cases, Par. 61,171; *Crabb v. Weldon Brothers*, 164 F.2d 797; *Clyde v. Broderick*, 52 F. Supp. 533; *Clyde v. Broderick*, 144 E.2d 348; *Anderson v. Federal Cartridge Corp.*, 13 Labor Cases, Par. 61,072 (D.C. Minn.); *Barksdale v. Ford, Bacon & Davis, Inc.*, 70 F. Supp. 690 (E.D. Ark.); *Clyde v. Broderick*, 52 F. Supp. 533 (D. Colo.), reversed on other grounds, 144 F.2d 348; *H. B. Neal & Company, Inc. v. Leonard*, 210 Ark. 512, 196 S.W.2d 991; *Dickenson v. Trojan Powder Co.*, not officially reported, D. C. N. D. Ohio, W.D., April 18, 1914; *Diems v. Hazeltine Electronics Corp.*, 70 F. Supp. 686 (S. D. N. Y.), affirmed, 163 F.2d 100; *Hays v. Hercules Powder Co.*, 13 Labor Cases, Par. 61,123 (D. C. W. D. Mo.); *Kennedy v. Silas Mason Company*, 68 F. Supp. 576, affirmed 70 F. Supp. 929 (W.D. La.), affirmed 164 F.2d 1016, 13 Labor Cases, Par. 61,170; *Kruger v. Los Angeles Shipbuilding and Drydock Corp.*, 12 Labor Cases, Par. 61,660 (D. C. S. D. Calif.); *Lynch v. Embury-Riddle Co.*, 63 F. Supp. 992 (S.D. Fla.); *Matlock v. Sanderson & Porter*, 7 Labor Cases, Par. 61,806 (Cir. Ct. Ark.); *Patton v. Roane-Anderson Co.*, 14 Labor Cases, Par. 61,245 (D. C. E. D. Tenn.); *Raymond v. Parrish*, 30 S.E.2d 669 (Ga. App.); *Ritch v. Puget Sound Bridge & Dredging Co.*, 60 F. Supp. 670 (W.D. Wash.), reversed on other grounds 156 F.2d 334; *Selby v. J. A. Jones Construction Co.*, 14 Labor Cases, Par. 61,246 (D. C. E. D. Tenn.); *Stewart v. Kaiser Company, Inc.*, 71 F. Supp. 551 (D. Ore.); *Torres v. Lock Joint Pipe Co.*, Prentice-Hall Wage & Hour Service, Vol. 1, Par. 19,189.8 (D.C. Puerto Rico); *Trefz v. Foley Bros., Inc.*, 72 Labor Cases, Par. 61,743 (D. C. W. D. Mo.); *Young v. Gellex Corporation*, 14 Labor Cases, Par. 61,244 (D. C. E. D. Tenn.); *Cody, et al., v. Dossin's Food Products*, 156 F.2d 678; *Jones v. Springfield Missouri Packing Co.*, 45 F. Supp. 997; *Gibson v. St. Paul Fire & Marine Insurance Co.*, 184 S.E. (West Va.) 562; *Tripp v. United States Fire Ins. Co.*, 41 Pac.2d (Kansas) 236; *Bell v. Porter*, 159 F.2d 117; *Jackson v. Northwest Airlines* (D.C. Minn., Oct. 9, 1917), 75 F. Supp. 32; *O'Riordan v. Helmers, Inc.*, 6 W.H. Cases 961 (N.Y.C. Ct. 1917); *Ware v. Goodyear Corp.*, 6 W.H. Cases 160 (S.D. Ind., 1916); *Stettman v. Remington Rand*, 6 W.H. Cases 336 (S.D. Ill., 1916); *Mockl v. Dupont de Nemours & Co.*, 6 W.H. Cases 638

tween defendant and an agency of the United States for the manufacture of "materials, supplies, articles and equipment in an amount exceeding \$10,000.00", and that plaintiffs and all other employees of defendant were at all times engaged exclusively "in the manufacture of materials, supplies, articles and equipment used in the performance of the contract" between defendant and the United States.

Which of these two acts did Congress intend should apply to a cost-plus-a-fixed-fee contractor manufacturing munitions of war exclusively for the United States under contract with the United States? If a portion of defendant's business had been devoted to the "production of goods for commerce" for others than the United States, the question whether the Walsh-Healey Act should apply to the employees engaged in the production of the munitions under contract with the United States and the Fair Labor Standards Act should apply to other employees would be a proper subject for consideration. But such is not the case here. All goods produced were for the United States under contract therewith. It has not been suggested and could not be reasonably contended that the Walsh-Healey Act

(N.D. Ill., 1947), 12 Labor Cases, Par. 63,445; *Blazier v. Western Pipe & Steel Co.*, 6 W.H. Cases 637 (S.D. Cal., 1946); *Tiller v. Anchor Optical Corp.*, 6 W.H. Cases 655 (S. D. N. Y., 1947); *Roland v. United Airlines*, 6 W.H. Cases 663 (N.D. Ill., 1947); *Belanger v. Hopeman Bros.*, 6 W.H. Cases 616 (D. Maine, 1947); *Umthun v. Day & Zimmerman, Inc.*, 16 N.W.2d 258 (S. Ct. Iowa, 1944); *Timberlake v. Day & Zimmerman*, 49 F. Supp. 28 (S.D. Iowa, 1943); *Lasater v. Hercules Powder Co.*, 7 W.H. Cases 150 (E.D. Tenn., 1947); *McCumsky v. Norden, Inc.*, 7 W.H. Cases 142 (N. Y. S. Ct., 1947); *Smkins v. Elmhurst Construction Co.*, 181 Misc. 791, affirmed 181 Misc. 793, affirmed 268 App. Div. 858; *Steiner v. Pleasantville Constructors*, 181 Misc. 798, affirmed (modified on other grounds) 182 Misc. 66, affirmed 269 App. Div. 798; *Henderson v. Bechtel-McCormick Corp.*, 7 W.H. Cases 107 (N.D. Ala., 1947); *Fox v. Summit Hill*, 143 F.2d 926 (9th Cir.); *Ware v. Goodyear Engineering Corp.*, 6 W.H. Cases 160 (S.D. Ind.); *Moehl v. Dupont de Nemours & Co.*, 6 W.H. Cases 638 (N.D. Ill.), 12 Labor Cases, Par. 63,545; *Bailey v. Porter*, 6 W.H. Cases 1017 (N.D. Ill., 1947); *Southern California Freight Lines v. Davis*, 167 F.2d 708; 14 Labor Cases, Par. 61,479; *Harrington v. Empire Construction Co.*, 167 F.2d 389; 14 Labor Cases, Par. 61,455; *Alfred Kovacs et al. v. Metropolitan Life Insurance Company et al.*, 14 Labor Cases, Par. 61,480 (S. D. N.Y., April 20, 1948).

was repealed by the passage of the Fair Labor Standards Act, in view of the amendment of the former subsequent to the passage of the latter, the recognition of the Walsh-Healey Act in the National Defense Act of July 2, 1940 (Sections 1171-1172, Title 50 App. U.S.C.A.),⁷ and Executive Order 9001 of The President, issued December 29, 1941, 6 Fed. Register 6787.⁸

The Walsh-Healey Act is not an exercise by Congress of regulatory power over private industry or employment, nor an act of general application to industry. *Perkins v. Lukens Steel Co.*, 310 U.S. 113; *Endicott-Johnson Corp. v. Perkins*, 317 U.S. 501. The purpose of the Act was, as pointed out in *Endicott-Johnson Corp. v. Perkins*, to raise labor standards for the segment of industry doing business with the Government. To accomplish that purpose, it specified, as the terms on which the Government would do business with private concerns, the hours of employment and that overtime should be paid for all hours in excess of 40 hours per week. It applied irrespective of whether the workers employed in producing the goods contracted for were engaged in producing goods "for commerce" or exclusively in intra-state commerce. The sole criterion of application in that regard was that the goods were to be produced for the Government. And with respect to hours of work and rates of pay, the Walsh-Healey Act was more

⁷That Act provides: "That no contract entered into pursuant to the provisions of this section which would otherwise be subject to the provisions of the Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (49 Stat. 2036; 41 U.S.C. secs. 35-45), shall be exempt from the provisions of such Act [sections 35-45 of Title 41] solely because of being entered into without advertising pursuant to the provisions of this section."

⁸That Order provides: "No contract or modification or amendment thereof shall be exempt from the provisions of the Walsh-Healey Act (49 Stat. 2036) because of being entered into without advertising or competitive bidding, and the provisions of such act, the Davis-Bacon Act, as amended (49 Stat. 1011), the Copeland Act, as amended (48 Stat. 948), and the Eight Hour Law, as amended by the Act of September 9, 1940 (Public No. 781, 76th Congress) if otherwise applicable shall apply to contracts made and performed under the authority of this Order."

favorable to labor than the later Fair Labor Standards Act, in that there was no progressive reduction of weekly hours of labor from 44 hours to 40, as in the Fair Labor Standards Act, and there was no minimum wage fixed at a figure comparatively low if compared with wages actually being paid in manufacturing industries. The Walsh-Healey Act fixed the wage to be paid at not less than the minimum wage (to be determined by the Secretary of Labor) for persons employed on similar work in the locality where the goods for the Government were to be produced. The Fair Labor Standards Act had also as its purpose the improvement of living conditions and labor standards. It was designed and intended to affect private industry engaged in interstate commerce. Its provisions relative to minimum wages and hours of labor for those employed in making goods for the United States were unnecessary as provision therefor equal or more advantageous to labor had already been made by the Walsh-Healey Act. The Fair Labor Standards Act further provided that the employee might recover liquidated damages and attorney fees. But the Walsh-Healey Act had already provided sanctions for the violation by those furnishing goods to the United States of its provisions relative to hours of employment and rates of pay, and had already provided that any wages due employees engaged in producing goods for the United States might be withheld by the United States and paid to the employee or recovered in the name of the United States by the Attorney General and paid to the employee. Thus, the Walsh-Healey Act had provided for the collection of any wages due employees such as plaintiffs without cost to them and had provided sanctions more severe in some respects than those of the Fair Labor Standards Act for failure to pay without compulsion.

The Wage and Hour Division of the Department of Labor, as Amicus Curiae, suggests that both Acts may be

applicable and that plaintiffs may have the benefit of the most favorable provision of either—in this instance, the liquidated damages and attorney fee provisions of the Fair Labor Standards Act. We are not impressed with the view that Congress intended that an employee might elect which of these Acts would apply to his individual employment or claim for compensation, with the attending confusion in computing wages and the collection of claims therefor. Nor are we impressed with the view that Congress intended that when an industry was engaged in producing munitions of war for the United States under a cost-plus-a-fixed-fee contract and failed to pay an employee engaged in such production his proper wages, that the United States should be required to pay him not only his unpaid wages but also an amount equal thereto as liquidated damages, and, in addition, his attorney fees, when another method of safe-guarding the employees' rights had been provided which does not entail such a penalty against the United States. We are of the opinion that the two Acts are sufficiently divergent that both may not apply at one and the same time, that the Walsh-Healey Act was intended by Congress to apply to the employees of manufacturers engaged in producing munitions of war for the United States, and that under the Walsh-Healey Act liquidated damages and attorney fees may not be recovered by the employee.

It has been suggested that the National Defense Act of July 2, 1940, suspended the operation of the Fair Labor Standards Act and, a fortiori, the Walsh-Healey Act. The National Defense Act was passed in the interest of national defense, to provide for the production of war materials of all kinds necessary to the successful prosecution of the war. Summarized, it authorizes the Secretary of War to provide for the construction of plants and facilities for the development, manufacture, maintenance, and storage of military equipment, munitions and supplies, and to provide for the

purchase, manufacture, shipment, and storage of such supplies. It carries a provision that the regular working hours of laborers and mechanics employed by the Department of the Army, who are engaged in the manufacture, or production, of military equipment, munitions, or supplies, shall be eight hours per day or forty hours per week during the period of the national emergency and that overtime shall be compensated for at one and one-half times the regular rate of pay. But it contains a proviso, as heretofore noted, that no contract which would otherwise be subject to the provisions of the Walsh-Healey Act should be exempt therefrom merely because contracts entered into pursuant to the authority of the National Defense Act were made without advertisement. We have indicated above that we construe this latter proviso as a recognition by Congress of the continued effectiveness of the Walsh-Healey Act.

Our attention has been directed to our opinion in *Day & Zimmerman v. Reid*, 168 F.2d 356, as authority for plaintiffs' right to recover liquidated damages and attorney fees under the Fair Labor Standards Act. The defense interposed to plaintiffs' claim in that case was the Portal-to-Portal Act of 1947. The parties stipulated the amount due plaintiffs under the Fair Labor Standards Act, subject to a determination by the court of plaintiffs' right to recover that amount in view of the defense interposed under Section 9^a and 11¹⁰ of the Portal-to-Portal Act. The trial court construed and applied the Portal-to-Portal Act. Our review was limited to the correctness of the trial court's action in that regard. No question was raised concerning the application of the Fair Labor Standards Act, the Walsh-Healey Act, or the National Defense Act, and no such question was decided. That case is therefore no authority in the present case.

⁹20 U.S.C.A., Sec. 258.

¹⁰29 U.S.C.A., Sec. 260.

Since the district court did not have jurisdiction of the cause under the Fair Labor Standards Act and since the Walsh-Healey Act does apply and plaintiffs may not maintain this action under the Walsh-Healey Act, the cause is reversed.

JOHNSEN, Circuit Judge, concurring separately.

On September 8, 1939, the President proclaimed the existence of a national emergency with respect to "the strengthening of our national defense within the limits of peace-time authorizations." Proclamation 2352, 3 CFR, 1939 Supp., pp. 59, 60.

The Congress took cognizance of the emergency and sought to "expedite" the strengthening of our national defense, by grants of additional powers to the President, the Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury, "during the national emergency declared by the President * * * to exist," for the purpose of facilitating the obtaining of necessary implements, munitions, etc., for the military, naval, and coast-guard services.

Two measures, popularly known as the National Defense Acts, were enacted in June and July, 1940. The first of these, Act of June 25, 1940, 54 Stat. 676, ch. 440, 50 U.S.C.A. App. §1151 et seq. had relation primarily to the naval and the coast-guard services, but it contained the following general provision: "During the national emergency declared by the President on September 8, 1939, to exist, the provisions of the law prohibiting more than eight hours' labor in any one day of persons engaged upon work covered by Army, Navy, and Coast Guard contracts shall be suspended." 54 Stat. 678, 679, § 5(b), 50 U.S.C.A. App. §1155(b). The second of the National Defense Acts, Act of July 2, 1940, 54 Stat. 712, ch. 508, 50 U.S.C.A. App.

§1171 et seq., 5 U.S.C.A. § 189a, had application to the War Department.

Under subsection (a) of §1 of this Act, the Secretary of War was given power, without the necessity of resorting to advertising, to provide, among other things, for the purchase or manufacture of military equipment, munitions, and supplies, and for shelter, "under such conditions as he may deem necessary." He was similarly empowered to purchase or to construct munitions plants, as well as to provide "Government-owned facilities at privately owned plants." Subsection (b) expressly authorized him to operate any such plants acquired or constructed and any facilities so furnished, "either by means of Government personnel or through the agency of selected qualified commercial manufacturers under contracts entered into with them." There was a further general provision in section 1, authorizing him to make such contracts or such amendments or supplements to existing contracts, "as he may deem necessary to carry out the purposes specified in this section."

These were extraordinary powers, intended to be granted for a limited period only, and designed to accomplish an emergency purpose. The scheme, which is involved in the present situation, of producing munitions in government-owned plants, "through the agency of selected qualified commercial manufacturers," on the basis of cost plus a fixed fee for carrying on the operations; with title to both the materials used and the products manufactured resting at all times in the United States; was admittedly a novel and revolutionary set-up in the field of American industrial life. The "Statement of Labor Policy," issued jointly by the War and Navy Departments on June 22, 1942, with the approval of the President of the American Federation of Labor and the Chairman of the Congress of Industrial Organizations, characterized it in this language: "The industrial units thus created are unique. * * * These plants

embody a new and tripartite relationship among Government, labor, and management."

The commercial operating agency was not economically affected by the production costs and so had no direct concern about the wages and overtime rates that might be paid in the plant. These questions therefore were matters which the Government of necessity was required to resolve. If it could be said to have been the intention of Congress to make the Walsh-Healey Public Contracts Act, 49 Stat. 2036, 41 U.S.C.A. §35 et seq., govern the hybrid relationship involved, the scale of minimum wages and the rate of overtime pay were matters over which the Secretary of Labor had generally the power of determination and control:

I can see some sound reasons to doubt that the National Defense Acts could have intended to permit of any possibility of a slowing of the Secretary of War's and the Secretary of the Navy's emergency defense efforts through a necessary resort to the normal processes of investigation, determination, etc. by the Secretary of Labor, as the latter would have the power to compel them to do under the Walsh-Healey Act. Moreover, Congress did not expressly declare that the unique, hybrid relationship, which it was permitting to be created as an emergency measure, was within the operation of the Walsh-Healey Act. In fact, it specifically refused to make a general declaration that all contracts made by the Secretary of War under section 1 of the Act of July 2, 1940, should be subject to the provisions of the Walsh-Healey Act. The Conference Committee Report on the Bill had contained the following statement (Cong. Rec., Vol. 86, Part 8, p. 8901): "The conference agreement * * * provides that instead of all contracts under the section being subject to the provisions of the Walsh-Healey Act, no such contract which would otherwise be subject to such Act should be exempt from its provisions solely because it was entered into without advertising."

And pursuant to the conference agreement, section 1 of the Act, on final passage, was made to contain the simple proviso, "That no contract entered into pursuant to the provisions of this section which would otherwise be subject to the provisions of the (Walsh-Healey) Act * * * shall be exempt from the provisions of such Act solely because of being entered into without advertising pursuant to the provisions of this section."

Parenthetically, it may be observed that there, of course, would be contracts made by the Secretary of War, in fields apart from that of the operation of the government-owned munitions plants, which normally and regularly would be subject to the provisions of the Walsh-Healey Act, except as it might be sought to be contended that they had been taken out of the operation of that Act because they had been made without advertising. The proviso quoted above would preclude the making of any such argument.

Beyond the failure expressly to provide that the hybrid relationship involved in the operation of a government-owned munitions plant should be governed by the Walsh-Healey Act, the Act of July 2, 1940, as I have already pointed out, further used such terms in relation to the scope of the Secretary of War's contracting powers as, "under such conditions as he may deem necessary" and "as he may deem necessary to carry out the purposes specified in this section." If a test of these powers should have arisen in a situation indicating the impossibility or impracticality, in attempting to make prompt defense preparations, of having the wage scales and overtime rates fixed in these plants except by War Department action, I should doubt that any court would have difficulty in seeing in the nature and the language of the Act, as I have discussed them above, a reservoir of power in the Secretary of War so to act, independent of the wage and hour provisions of any other statute.

The Secretary of War's actions, under this concept of the statute, might perhaps be subject to the control of an Executive Order issued by the President, and, of course, they necessarily would be so after the War itself began in 1941. The only other limitation that probably would exist on the Secretary's power was the clear indication of a congressional policy to have overtime rates paid for work in excess of 40 hours per week, as reflected in the express command in section 4(b) of the Act, 5 U.S.C.A. §189a, applicable to any direct operation of defense plants by the Secretary of War himself, that "the regular working hours of laborers or mechanics employed by the War Department, who are engaged in the manufacture or production of military equipment, munitions, or supplies shall be eight hours per day or forty hours per week during the period of any national emergency declared by the President to exist: *Provided*, That under such regulations as the Secretary of War may prescribe, such hours may be exceeded, but compensation for employment in excess of forty hours in any workweek, computed at a rate not less than one and one-half times the regular rate, shall be paid to such laborers and mechanics."

But I do not think it necessary to discuss this aspect of the question further in the present case. Whether the Secretary of War had power generally under the Act of July 2, 1940, to fix wage scales and overtime rates and rights for the employees in the hybrid relationship involved in these munitions plants, as I have referred to above, without regard to the provisions of the Walsh-Healey Act, I agree that the provisions of the Walsh-Healey Act are in any event controlling of the employees' rights here. If the Secretary of War had such plenary powers under the Act of July 2, 1940, as I have discussed, the provisions of the Walsh-Healey Act are nevertheless controlling in the present situation, because the War Department, in its contract with the operator of the plant, specifically made

the provisions of that Act applicable to the wage and overtime rights of the employees, as the Secretary of War would have the right to do under the circumstances.

If the Act of July 2, 1940, did not give the Secretary of War such plenary powers in the defense situation as I have discussed, the Walsh-Healey Act, and not the Fair Labor Standards Act, still clearly is controlling here, as a matter of general application in the field involved. In the enactment of the Walsh-Healey Act, Congress, I think, intended to constitute such employees as would be engaged in producing supplies or goods directly for the Government under an express contract, as a special legislative class, and, through the force of the Government's contracting power, to control their hours of labor, their rate of minimum pay, and their overtime rights, to the extent that it deemed it necessary in this field. It did not relate its jurisdiction in the field to any test of commerce, and the question of commerce therefore, in my opinion, has nothing to do with the rights of the class.

The Walsh-Healey Act establishes a special and complete labor policy of its own. It is intended to prevent any working of a covered employee for more than eight hours a day or forty hours a week, except with the permission of the Secretary of Labor. 41 U.S.C.A. §35. Unless the Secretary of Labor permits overtime work to be done, the employer may not allow his employees to engage in any. If the Secretary permits overtime work, he has the right to fix the rate that shall be paid therefor, "which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected." Id., §40. Minimum wages must be paid the employees of not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in

the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract." Id. §35. Where the contracting party otherwise has been engaged generally in commerce or in the production of goods for commerce, his wage scale presumably will have met the standards prescribed by the Fair Labor Standards Act, but manifestly the minimum wages determined by the Secretary of Labor to be applicable in the performance of some Government contract may exceed the Fair Labor Standards Act's requirements.

The Walsh-Healey Act further specifically recognizes that special elements of public interest may exist in the performance of such a Government contract, which command consideration, and it accordingly empowers the Secretary of Labor to make exceptions or dispensations with respect to the provisions of the Act in necessary situations, "in the public interest or to prevent injustice and undue hardship" or where otherwise it might "seriously impair the conduct of Government business." Id. §40.

All of these provisions set up standards and requirements, which are without any relationship to the Fair Labor Standards Act. And an employee to whom the Walsh-Healey Act has application cannot claim the right to come generally under the Fair Labor Standards Act, for that would nullify the power of the Secretary of Labor to exercise his judgment with respect to some of the elements which Congress recognized that he might find it necessary to give consideration to, in the practical performance of, or in meeting a public need under, a Government contract.

The employees here predicate and seek to recover overtime rights on the basis of the Fair Labor Standards Act. But whatever rights they may have had in the situation, as I have pointed out, are derived from the Walsh-Healey Act, under the contract incorporating its provisions, and

not from the Fair Labor Standards Act. The incongruity of their attempt to invoke the Fair Labor Standards Act is readily apparent, I think, when the fact is taken into account that, under the Walsh-Healey Act, there could be no overtime work unless the Secretary of Labor gave his permission thereto, and that, except during the existence of Executive Order No. 9240, dated September 9, 1942, 7 F.R. 7159, as amended by Executive Order No. 9248, dated September 17, 1942, 7 F.R. 7419, which, as a war measure, limited all overtime payments in industries related to the prosecution of the war to not more than one and one-half times the regular wage rates, the Secretary of Labor, as a condition of granting such permission, could require the payment of overtime rates in excess of this amount, if he saw fit. The situation under the Walsh-Healey Act therefore was not one that was subject to the automatic overtime rate of the Fair Labor Standards Act. And whether overtime rights stemming from the Walsh-Healey Act might have been fixed in some situation at one and one-half times, or double, or treble, the regular wage scale, there would be no more right in the one case than in the others to use the Fair Labor Standards Act as a vehicle for their collection.

It must be remembered that Congress provided the Walsh-Healey Act with its own system of sanctions and procedure for accomplishing the objectives and vindicating the rights which it was intended to establish. That the Walsh-Healey Act does not permit of a direct suit by an employee on the contract between the Government and the employer may be an argument sentimentally in favor of why the Fair Labor Standards Act ought to apply, but it is hardly sound rationale legally for holding that it does. Nor does the fact that the munitions produced may have been shipped in interstate commerce weigh in favor of the application of the Fair Labor Standards Act, as against the inexorable fact that the Walsh-Healey Act stands as a

special statute, for a specific class, involving indicated factors of consideration in public interest and governmental functioning, not made applicable to the general field of the Fair Labor Standards Act, and to which the commerce test therefore has no relation.

It might further be observed that, if Congress had intended the employees of the approximately 100 government-owned munitions plants, that were established, to have rights beyond those granted by the National Defense Acts or the Walsh-Healey Act, and to be able generally to recover double damages and attorneys' fees, it hardly seems reasonable to suppose that it would have left the situation so that those working in some plant, which might by chance be making guns, ammunition, or other supplies entirely for use at some training camp or on some rifle or artillery range, existing within the same state where the plant was located, would be precluded from such benefits on the basis of a commerce test, when it had the power, and there would seem to be no reason not, to have treated them equally with the employees of other such munitions plants. It might also be added that, if the Secretary of War had no such plenary powers under the Act of July 2, 1940, to fix wage rates and overtime rights, as I have initially suggested, but he was required to act in relation to such other statutes as existed and to guide his actions by whichever was applicable, the provision which he made in the contract, subjecting it to the obligations under the Walsh-Healey Act and not the Fair Labor Standards Act, could properly be viewed as an administrative interpretation and accorded the weight to which it normally would be entitled, in the emergency situation in which it was necessary for him to resolve the question and to act.

I can see no basis for any right in the situation to maintain an action under the Fair Labor Standards Act, and I agree that the suit should be dismissed.

Sanborn, Woodrough and Riddick, Circuit Judges, besides joining in the Court's official opinion, concur also in the foregoing separate opinion.

[fol. 34]

(Judgment.)

United States Court of Appeals

Eighth Circuit.

March Term, 1949.

Tuesday, April 12, 1949.

Julia Rhoda Aaron and all other plaintiffs and interveners listed in the Complaints and Interventions in the District Court in Civil Action No. L. R. 1584 Consolidated, Appellants,

No. 13,660. vs.

Ford, Bacon & Davis, Incorporated.

Appeal from the United States District Court for the Eastern District of Arkansas.

This Cause came on to be heard on the record from the United States District Court for the Eastern District of Arkansas, and on motion of appellee to tax against appellants the cost of printing supplemental record, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that said motion to tax costs be, and the same is hereby, denied.

And It is Further Ordered and Adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

April 12, 1949.

[fol. 35] (Motion of Appellants for Stay of Issuance of Mandate.)

The above named appellants respectfully represent to the Court that on April 12, 1949, this Court rendered and filed its opinion in the above entitled cause, in connection with its opinion rendered and filed on the same date in the cause of The United States Cartridge Company, a corporation,

appellant, vs. R. M. Powell, et al., appellees, wherein the Court affirmed the order of the District Court for the Eastern District of Arkansas, Western Division, which dismissed the plaintiffs' complaints.

Appellants are now preparing a petition to the Supreme Court of the United States for a writ of certiorari in said cause, and have given directions to the Clerk of this Court to prepare the necessary record to accompany said petition.

Wherefore, the appellants pray that the Court enter an order staying the mandate in the above cause pending their application to the Supreme Court of the United States for a writ of certiorari.

Respectfully submitted,

CHARLES H. EARL,

PAUL TALLEY,

WAYNE W. OWEN,

COOPER JACOWAY,

GERLAND P. PATTEN,

JUNE P. WOOTEN,

Attorneys for Appellants,
By June P. Wooten.

(Endorsed): Filed in U. S. Court of Appeals, Apr. 27, 1949.

[fol. 36] (Order Staying Issuance of Mandate.)

March Term, 1949.

Wednesday, April 27, 1949.

On Consideration of the motion of the appellants for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari,

record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

April 27, 1949.

[fol. 37]

(Clerk's Certificate.)

United States Court of Appeals
Eighth Circuit

I, E. E. Koch, Clerk of the United States Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains Record as printed by appellants and Supplemental Record as printed by appellee on which the appeal from the United States District Court for the Eastern District of Arkansas was heard in said Court of Appeals, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause wherein Julia Rhoda Aaron and all other Plaintiffs and Interveners Listed in the Complaints and Interventions in the District Court in Civil Action No. L. R. 1584 Consolidated, were Appellants, and Ford, Bacon & Davis, Incorporated, was Appellee, No. 13,660 in the United States Court of Appeals.

And I do further certify that there is included in the foregoing transcript a copy of the Opinion of the United States Court of Appeals for the Eighth Circuit filed April 12, 1949, in the case of The United States Cartridge Company, a corporation, Appellant, vs. R. M. Powell, et al., Appellees, No. 13,663, referred to in the opinion in the instant case.

[fol. 38] In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 28th day of April, A. D. 1949.

(Seal)

E. E. KOCH,
Clerk of the United States
Court of Appeals for the
Eighth Circuit.

[fol. 39] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 27, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted. The case is assigned for argument immediately following *Creel vs. Lone Star Defense Corporation*, No. 746, October Term, 1948.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3416)

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 58

BOY CREEK, ET AL, PETITIONERS,

vs.

LONE STAR DEFENSE CORPORATION

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PRINTED FOR THE COURT AND FILED APRIL 21, 1950

RECEIVED MAY 4, 1950

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CAPTION.

BE IT REMEMBERED, that on the 3rd day of May, 1946, in the District Court of the United States for the Eastern District of Texas, in the Fifth Circuit, before the Honorable Randolph Bryant, presiding judge of said court, the following proceedings were had, at Sherman, Texas, in the case of Roy Creel, et al. vs. Lone Star Defense Corporation, Civil Action No. 191, which cause was pending in said court, the said cause having been transferred by order of court from the District Court of Bowie County, Texas to the Texarkana Division of said court, to-wit:

Style of cause:

ROY CREEL, ET AL.,

Plaintiff,

versus

LONE STAR DEFENSE CORPORATION,
Defendant.

2
REMOVAL ORDER.

In the District Court of Bowie County, Texas.

Roy Creel, et al.,

vs.

No. 05137-A.

Lone Star Defense Corporation.

On this the 3 day of Dec., 1945, came on to be heard the petition of the defendant, Lone Star Defense Corporation, for the removal of the above styled and numbered

cause to the District Court of the United States for the Eastern District of Texas, Texarkana Division at Texarkana, Texas, and it appearing to the Court that said cause is one proper to be removed by said defendant, and that said petition is sufficient in law, and that said defendant Lone Star Defense Corporation, has filed therewith a bond conditioned as required by law, with good and sufficient surety, and that written notice of said petition and bond was given to the plaintiff, prior to the filing of same, in the manner and form required by law,

It Is Therefore Ordered by the Court that said petition and bond be and they are hereby approved by the Court and that said cause be, and the same is hereby removed to the District Court of the United States for the Eastern District of Texas, Texarkana Division at Texarkana, Texas, and that this Court proceed no further herein, and that the Clerk of this Court forthwith make up a certified copy of the record and proceedings in said cause for use in the District Court of the United States, and deliver the same to the Attorneys for the Defendant, Lone Star Defense Corporation.

Before the action of the Court on the petition and bond for removal, plaintiff's objections and exceptions to removal were overruled and plaintiff's except.

N. L. DALBY,

Judge of the District Court of
Bowie County, Texas, Pre-
siding.

Indorsed: No. 05137-A. In the District Court of Bowie County, Texas. Roy Creel, et al. vs. Lone Star Defense Corporation. Removal Order. Filed Dec. 3, 1945. Sam Minnick, Dist. Clerk, Bowie County, Texas. Ora Corley, Deputy.

PLAINTIFF'S AMENDED COMPLAINT.

In the District Court of the United States, Eastern District
of Texas, Texarkana Division.

Roy Creel, et al.,

vs.

Civil No. 191.

Lone Star Defense Corporation.

To said Honorable Court:

Roy Creel, plaintiff, for his Amended Complaint, served
before the defendant has answered herein, alleges:

I.

The plaintiff brings this suit for himself individually,
and for and on behalf of and for the use and benefit of
the following named persons, some of whom reside in
Bowie County, Texas, and some of whom reside in the
State of Arkansas, all of whom were employed by the de-
fendant, and who will hereinafter be referred to as em-
ployees, to-wit:

Joe Adkins; Lamar Allen; Marion Ellis Allen; R. A.
Anderson; Verdie M. Anderson; William B. Adams; H. D.
Alston; Augustus Atkins; Gorea Allen; John J. Allen; J. E.
Abercrombie; C. A. Anderson; Bill Abbott;

James C. Brazell; James P. Barnes; A. C. Black; Robert
S. Brown; Angeline J. Brown; Cephas Bacon; Fred Butler;
Roy Brown; H. F. Bearding; Jessie Brown; Willie Bonner;
Oscar J. Boddie; Roy L. Balmain; L. W. Birtcher; Henry
Britt; W. R. Bateman; Thomas L. Brown; F. F. Barnett;
A. M. Birtcher; Homer F. Bearden; Henry Boother, Jr.;
Leroy Banks; Alorn Brados; Veasey C. Buttram; Andrew
Robert Brown; Jewell E. Bolden; Lush Brown; William

H. Byrd; Robert Brown; S. C. Banks; Roy Birdwell; Ben Bell; Zarrer Becks; James Braxton; Edward L. Brooks; Jewel L. Beck; R. V. Branum; Robert E. Bares; Robert Booth; P. B. Block; Virgil L. Bettes; Joseph F. Bayless; Curtis Briley.

Dillard W. Cooley; Homer E. Conger; Henderson C. Chesshir; Merrill C. Clayton; C. G. Compton; Henry C. Clement; Odis F. Clements; I. Z. Compton; James Collins; Samuel B. Cheatham; David L. Campbell; Malon Compton; W. D. Car; Thomas E. Carver; J. C. Cabaniss; W. A. Colliums; Morris Clements; Joe J. Clayton; James L. Chance; L. W. Collom; Ernest E. Cabaniss; Willie B. Chelf; Willie D. Carroll; Loyd Chatman; Wayland W. Clark; Paris Chapple; Alonzo Caldwell; William Crockett; Jolly C. Crocker; John Henry Cooper; Roosevelt Cheatham; Raymond Herbert Chasteen; Louis L. Caver; Thomas N. Coopwood;

W. A. Duncan, Sr.; Russell E. DeVance; Francis N. Dodson; Lee Erter Davis; F. C. Davis; M. D. Dickerson; H. T. Dogen; Harold Dodson; M. E. Dalton; Charlie L. Drake; Elemo Durham; B. W. Dupree; J. K. Daniels; Roosevelt Dickerson; Johnnie Donnell; Willie Dunn; Odis L. Dill; Jim Daniels; Rayfield Davis; Virgil A. Davis; Jimmie Jacob Durham;

Felton Epps; Samuel R. Edmonson; J. Elliott; Howard Edwards; Osker L. Evans; Mattie E. Ellis; Robert E. Elam;

Archie M. Fields; Theopris Fisher; Quincy W. Foshee; Clance Frinch; Lee Foster; Samuel L. Franklin; Albert Fedrick;

James W. Gholson; L. P. Garner; Aubrey F. Graves; T. A. Galbalth; Hershel Grant; Bernice Golden; William

M. Grant; Clarence D. Gantt; George Greer; Sam T. Gullion; F. L. Gaulden; Ozay Garner; Edgar L. Goodroe; James Germany; Conway Garrison; Earnest Grundy; Hugh O. Green; Nathaniel Graham; Elvin Graves; Elone Green; Zack T. Griffen; Edwin R. Gossett; William M. Green; John W. Green;

Raymond Hidgeons; Haskell T. Haynes; Ted Harvey; James G. Hollins; Willie R. Henderson; Maurice Howell; Will Hubbard; Preston Hilburn; Virgie Hatley; Bernice Henderson; Walter U. Harris; Arvel Haskins; J. E. Hargis; W. C. Hill; Clyde House; E. D. Hyman; Claud Harden; Clarence E. House; Raymond W. Huffman; C. L. Hood; Gerald B. Hoffman; M. T. Hooser; Hulie S. Hubbard; Nathan Haywood; Kermit R. Halton; Grover C. Heath; Webber Hawkins; Preston Hervey; Jesse T. Hightower; David Hawkins; Curtis Heath; Rastus G. Henderson; J. C. Hadley; Albert Hutchinson; John W. Heath; Joe Henderson; Henry Hollins; Avance Haskins; George Harmon; Olgie C. Houston; Gracie T. Hufstetler;

Houston C. Johnson; J. O. Jones; O. L. Johnson; Jewel Jones; Herbert Johnson; Robert Johnson; John H. Jackson; H. E. Jones; Morris S. James; Geo. W. Jenkins; M. C. Jiles; Johnnie Johnson; Walter M. Johnson; Paul Jones; Shelie James; L. V. Johnson Charley Johnson; Fred Jackson; Ike Jones; Edgar L. Jagers;

Niven S. Kyles; Thomas Knight; Oscar L. Knight; Roy King; Judge Kenner; Willie B. Kenner; Clamon Knight; John Kinsey; James A. Kingston;

William A. Lee; Zaniel D. Lynn; Roosevelt Lilliard; Jeff E. Lewis; Jessie Lewis; Foster Lowers; Conraid Leonard; C. E. Lonsens; C. R. Lemley; M. L. Lemley; Jessie L. Lewis; Bennie Lockett; Henry P. Livingston; Henry Lucker;

Luther D. Litton, Jr.; Castle B. Lane; Martin Lincoln;
Tom Love;

R. D. Marlar; Joe M. McPherson; James F. Moore; Dock
J. Mack; Johnnie Modloer; Lee Maxwell; Jim McDuff;
Lawrence D. May; Clarence H. Morgan; Horace M. Milla-
way; T. B. McGorry; R. H. McClurg; James O. Miller;
T. C. May; Paul S. Morgan; James H. McGee; Glen W.
Moore; Willie H. Miles; Frank S. McCoy; H. W. Morgan;
James Martin; L. V. Munson; Sam Mitchell, Jr.; Jack
McFarland; Ival L. McLarty; Joseph W. Meers; O. D.
Miller; Willie Mershell; Lawson Muldrew; W. R. McDaniel;
Travis McDougal; Marion Martin; W. F. Mitchell; Clar-
ence Mitchell; Arthur Moreane; Roy Moreane; Johnny
Morine;

Thomas R. Newsom; Garland A. Nottingham; C. C.
Norris; Allen D. Nash; Thomas Norton; G. D. Nugam;
Minion Neal; Sam Neal; Lucille E. Neal; Roscoe C. Now-
lin;

Edgar B. Owens; Prentice Oliver; P. D. Oliver;

John Perkins; Murray F. Phillips; Hursel Perry; H. E.
Payne; Norman L. Parker; Herbert A. Power; Lige W.
Pettigrew; Bryan E. Pettigrew; Jessie B. Parks; Will Pen-
nington; Sidney Parker; Fred Powell; Jim Pickins; Mit-
chell M. Paxton; Tom Paxton; Joseph A. Pierce; Jessie
B. Parks;

Dean Quada;

Arthur H. Reynolds; Hery J. Rolf; John D. Richie;
Robert C. Robinson; Marvin A. Rogers; Geo. F. Raulston;
Sam E. Roper; Mose Rhymes; Will Richardson; Jewel
Reeves; William R. Rogers; Joe B. Rains; Wm. H. Runyan;

John Rike; J. D. Reece; Henry Rose; Janie W. Roberson;
Austin M. Rattler;

Alfred G. Sullivant; R. E. Strube; M. D. Stewart; W. C. Sutton; Jim C. Story; Frank Smith; Lafayette Smith; Riley A. Stafford; Essie L. Stewart; Pauline Simmons; John H. Slimmer; Perry Steger; Roy Steger; Stephen W. Salisbury; David Stephens; Thomas Stephens; Jeff C. Sims; O. L. Stone; John L. Sullivan; H. M. Short; Jim Stewart; J. T. Smith; Joe Sears; K. A. Scantland; Kenneth A. Stringer; Harlan Sexton; John M. Spencer; Glynn Stephens; Ed Smith; Leonard A. Simmons, Jr.; Freeman Sanders; R. T. Strong; John A. Smith; Fred Smith; J. R. Striplin; Henry Stanmore; Sam B. Sims; O. J. Skinner; George Satterwhite; James H. L. Shelton; Enoch Smith; Audrey M. W. Stanmore; Vernon Stanmore;

William A. Teer; Albert L. Thornhill; Owen F. Townsend; Elton Turner; E. L. Tutt; B. G. Taylor; Mart Thompson; Bishop Tyson; Jeffie Gerard Thomas; Leroy Terry; Wyven E. Tate; Copeland Thompson; Buse E. Tong; Otis L. Tong;

James C. Underwood;

Floyd F. Walker; Norman E. Westmoreland; Emmit Warren; Howard Warren; James D. Waters; George Walker; Green E. Williams; Bratten Warren; Sylvester Washton; Jeffery Washington; Lowell P. Wright; Marion Washington; Ber J. Williams; Tom Williams; Ruben Walker; W. E. Whited; W. B. Womack; Oswald Wells; Louis H. Williams; Harold Whitley; Everett Wells; John C. Wilson; L. F. Wright; V. J. Waters; L. H. Williams; James O. Wallace; James R. Watlington; Rufus W. Welborn; Leonard P. Williamson; Arthur Williams; Roy Wrather; Melvin Winters; A. J. Warren; John L. Watts; Buck Walker; Gus W. War-

ren; Lovic H. White; George Warren; W. M. Wilbanks; Leroy Warren; Lewis F. Walter; John Henry Winscher; Luke Wilson; Barix Walker; Ruth Watts Wells; Bryant H. Williams; Reather Witherspoon; Vernel Williams; Joseph White; Nurell Willis; Sam Walker; Arthur Williams;

W. L. Yates; Walter L. Yates; Joe W. Yancy; W. W. Young; Ollie Young;

Gordon R. Bell; Clarence W. Brewer; M. L. Collins; Horace Clements; Alton B. Collins; William B. Clawson; Phillip B. Chalker; A. B. Doss; C. C. Green; Charlie Green; Tom H. Harris; George W. House; R. L. Janson; Paul H. Keith; Clem L. Lamb; Curtis McClure; Jessie J. Nichols; Willis G. Rogers; Raphiel Spencer; Tom W. Shaddix; T. R. Thigpen; E. S. Thigpen; J. H. Watkins;

The plaintiff alleges that he and each of said employees have a cause of action against the defendant arising out of their employment, for overtime wages due them under the provisions of the Fair Labor Standards Act of 1938, as amended; and the plaintiff brings this suit for himself and for and on behalf of and for the use and benefit of each of said employees to recover such overtime wages due them and each of them and for liquidated damages, and attorneys' fees, all under the provisions of the said Fair Labor Standards Act of 1938, as amended; the plaintiff alleges that the amount due to him and to each of said employees is in excess of the sum of One Thousand (\$1000.00) Dollars each.

II.

That the defendant, Lone Star Defense Corporation, is a corporation duly organized and existing under and by

virtue of the laws of the State of Ohio, but having a permit to do business in the State of Texas, and is authorized and does engage in business in Bowie County, Texas, where service of citation in this cause may be had.

III.

At all times hereinafter mentioned, the defendant was engaged in the manufacture, production and processing of goods, for interstate commerce at or near Texarkana, Bowie County, Texas; that during the times herein mentioned, the defendant owned, operated and maintained an ordnance plant and establishment in said County and State where it manufactured, produced and processed ammunition and other goods intended for interstate commerce, during the period of plaintiff's and of each employee's employment. Subsequently, all of the goods manufactured by the defendant during the times hereinafter mentioned were produced for interstate commerce and were sold, offered for transportation, transported, shipped and delivered in interstate commerce from the defendant's plant near Texarkana, Texas, to various points outside the State of Texas.

IV.

During the work weeks beginning August 1, 1941, and ending on the date of the filing of this petition, defendant employed plaintiff and each and all of the above named employees, at various times, as well as various other persons in the manufacture, production and processing of ammunition and goods for interstate commerce. The goods produced by plaintiff and such employees during such periods were produced for interstate commerce and sold, offered for transportation, transported, shipped and delivered in interstate commerce from defendant's plant

in Bowie County, Texas, to points outside the State of Texas.

V.

In such business defendant from August 1, 1941, to the date of the filing of this petition, employed the plaintiff and each of the said employees, in various capacities in said plant. Some of such employees, including plaintiff, were employed as truck drivers and lift-fork operators and others were employed as loaders and unloaders in what was commonly known and designated by said defendant as Departments Nos. 1400 ad 1350, being known as the Warehouse and Transportation Departments and also Plant Maintenance Department of the defendant. The functions performed by the plaintiff and each of said employees were an essential part of the production of ammunition and goods for commerce as that term is defined by the Fair Labor Standards Act of 1938, as amended, and such operations are and were necessary to the completion of such goods. Subsequently, such ammunition and goods were shipped outside the State of Texas.

VI.

The plaintiff alleges that he and each of said employees, during the time of their respective employment with the defendant and during such periods aforesaid were employed for work weeks longer than the applicable maximum number of hours under Section 7 of the Act, and defendant failed and refused to compensate them and each of them for such employment in excess of such applicable maximum in such work weeks at rates not less than one and one-half ($1\frac{1}{2}$) times the regular rates at which they and each of them were employed. The employment of the plaintiff and each of said employees for work weeks

in excess of the applicable maximum under Section 7 of the Act, without compensating them and each of them, for such excess hours at rates not less than one and one-half ($1\frac{1}{2}$) times the regular rates at which they and each of them were employed, was in violation of Section 7 of said Act.

VII.

The plaintiff and each of the said employees aver that during the time of their employment with the defendant, they did and performed work and labor for it, in excess of forty (40) hours per week for which they have not been compensated; that neither they nor any of them, have a complete record of the work and labor performed by them while employed by the defendant; the defendant has an accurate and complete record of each and every hour worked by the plaintiff and by each employee, and the wages paid or purported to have been paid by the defendant, which said record is in the exclusive possession of the defendant, not subject to the inspection of the plaintiff, nor of said employees. Said records will reflect the hour at which the plaintiff and each of said employees clocked in for their work, and the hour at which they clocked out, and will show that the plaintiff and each of said employees put in not less than thirty minutes overtime each day in their employment with defendant; and said records will also show the number of hours for which the defendant paid the plaintiff and each of the said employees, and that the defendant is justly due and owing to the plaintiff and each of said employees overtime compensation for not less than thirty minutes per day for each day they worked for the defendant. Said records will also show the rate of pay per hour for each hour of regular employment during a forty-hour week, and the overtime compensation due the plaintiff and each of said employees would be one and

one-half ($1\frac{1}{2}$) times the regular hourly rate for each hour of overtime worked by the plaintiff and each of said employees. They and each of them are entitled to recover from the defendant for each hour of overtime labor done and performed by them under the terms of the Fair Labor Standards Act in excess of forty (40) hours per week. They and each of them are unable to calculate the accurate amount which the defendant owes them and each of them for the reason that the time-clock records and other records of such overtime hours and rate of pay are in the sole and exclusive possession of the defendant; and the defendant should be required to prepare and return into Court an itemized statement showing the number of overtime hours reflected by the time-clock records kept by the defendant for the plaintiff and each of said employees, the rates of pay for regular work on a forty-hour week basis for each respective period, and the changes in such rates of pay from time to time with the number of overtime hours as shown by the time-clock records during each respective period where there was different compensation per hour.

Plaintiff alleges that he and each of said employees are entitled to overtime compensation against the defendant for liquidated damages in a sum of money equal to the overtime compensation due to plaintiff and to each of said employees, and to reasonable attorneys' fees upon each separate and individual claim herein presented, and for said compensation, liquidated damages and attorneys' fees, the plaintiff brings this suit.

Wherefore, premises considered, plaintiff, for himself, and on behalf of and for the use and benefit of each of said employees, the defendant having been duly cited to appear and answer herein for the length of time and in the manner required by law, prays that the defendant be required to prepare and return into Court the reports

herein called for; and that the plaintiff, for himself and for each of said employees have judgment against the defendant for their overtime compensation, together with liquidated damages and reasonable attorneys' fees, as provided by the Fair Labor Standards Act; for costs of suit, and for such other and further relief, general and special, legal and equitable, as they may show themselves justly entitled to receive.

LINCOLN, HARRIS &
KENNEDY,

By C. M. KENNEDY,
(C. M. Kennedy),
Attorneys for Plaintiff.

The above and foregoing amended complaint was served upon Defendant by mailing a true and correct copy thereof to Wheeler & Atchley, Attorneys of Record for Defendants, at their correct address in Texarkana, Texas, this the 5th day of February, 1946.

LINCOLN, HARRIS &
KENNEDY,

By C. M. KENNEDY,
(C. M. Kennedy),
Attorneys for Plaintiff.

Filed Feb. 6, 1946.

AMENDMENT TO AMENDED COMPLAINT.

12

(Title Omitted.)

To said Honorable Court:

Now comes Roy Creel, with leave of the Court had and obtained in open Court, and files this amendment to his amended complaint, and for such amendment says:

I.

The plaintiff Roy Creel brings and maintains this suit for and in behalf of himself and all other employees named in Paragraph Numbered I of his Amended Complaint, he and all other of said employees being similarly situated; and said employees named in Paragraph Numbered I of his Amended Complaint have designated him as their agent to bring and maintain this suit for and in behalf of said employees, all of whom, together with himself, are similarly situated.

II.

In the alternative, if it be held by the Court that this action may not be maintained by the plaintiff in the capacity stated in his Amended Complaint, and in Paragraph Numbered I of this Amendment, then and in that event only this suit is brought and maintained by the plaintiff Roy Creel and by all other employees named in Paragraph Numbered I of his Amended Complaint as individual plaintiffs; and in such event the plaintiff Roy Creel and all other employees named in Paragraph Numbered I of said Amended Complaint pray that judgment be rendered for them and each of them in their individual capacities as plaintiffs for all overtime com-

pensation, penalties, damages, attorneys' fees and costs alleged and sued for in said amended complaint.

(S.) C. M. KENNEDY,
(C. M. Kennedy)
LINCOLN, HARRIS &
KENNEDY,
Attorneys for Plaintiffs.

312 P. & M. Building,
Texarkana, Texas.

The above and foregoing amendment to Plaintiffs' amended complaint was served upon Defendant by mailing a true and correct copy thereof to Wheeler & Atchley, Attorneys of Record for Defendants, at their correct address in Texarkana, Texas, this the 3rd day of May, 1946.

LINCOLN, HARRIS &
KENNEDY,
(S.) C. M. KENNEDY,
By C. M. KENNEDY,
Attorneys for Plaintiffs.

Filed May 3, 1946.

14

DEFENDANT'S ANSWER.

Filed Jan. 8, 1947.

(Title Omitted.)

To said Honorable Court:

The defendant, Lone Star Defense Corporation, for its answer herein, says:

I.

The facts alleged in Plaintiffs' Original Petition, the amended pleadings and Bill of Particulars, are not true as

alleged, and the defendant denies such facts in their entirety.

II.

Defendant says that plaintiffs' causes of action, if any they have or ever had, which is not admitted but is denied, accrued more than two years prior to the institution of this suit, and the same are barred by the Two Year Statute of Limitations (Article 5526, R. C. S.) of the State of Texas, which defendant now pleads in bar thereof.

III.

Defendant has paid plaintiffs all moneys which it owed them for the services performed by them for defendant, in accordance with their contract of hire, and all laws, statutes, and lawful regulations issued pursuant thereto, as applied to the plaintiffs and their employment with defendant, and the sums of money paid plaintiffs by defendant, were sums greater in amount and in excess of the sums of money which this defendant would have been required to pay them, and which they would have been entitled to receive, under the Fair Labor Standards Act, had said Act been applicable to defendant and plaintiffs' employment with it.

IV.

Defendant alleges that during the times plaintiffs were employed by it, that neither plaintiffs nor defendant were engaged in commerce, or in the production of goods for commerce, within the meaning of the Fair Labor Standards Act, because the defendant was operating a United States Government-owned Ordnance Plant upon a cost-plus-a-fixed-fee basis for the United States Government in load-

ing and assembling ammunitions from parts, explosives, components, and materials owned by the United States Government after their delivery into the actual physical possession of the United States Government, the ultimate consumer thereof, which Government of the United States, the ultimate consumer thereof, was not a producer, manufacturer, or processor thereof.

V.

The provisions of Sections 6 and 7 (Articles 206-207 of Title 29, U. S. C. A.) of the Fair Labor Standards Act, did not and do not apply with respect to the plaintiffs named in this paragraph during the period of time set opposite their names, each respectively, because during the period of time set opposite their names, as aforesaid, they, each respectively, were employed by defendant in a bona fide executive, administrative or professional capacity, as such terms are defined and delimited by regulations of the Administrator of the Fair Labor Standards Act, and therefore are exempt under Section 13 (a)(1) of said Act; the names of the plaintiffs whose employment, and the work performed by them, each respectively, were exempt under said Act, as in this paragraph alleged, and the period of their employment during which they, each respectively, were so exempt, are as follows. to-wit:

Area Warehouse Foremen.

Name	Period of Employment	
	From	To
Lige W. Pettigrew	12-11-1944	8- 6-1945

Building Foreman.

Green E. Williams	6-29-1942	2- 7-1944
-------------------------	-----------	-----------

Chief Scheduler.

Name	Period of Employment	
	From	To
M. L. Collins	10- 9-1944	8-23-1945

Foremen, Truck Dispatchers.

B. J. Reed	7-17-1944	8- 6-1945
Ruel Jansen	4- 9-1945	4-28-1945

Group Leader-Porter Service.

Jeffie G. Thomas	4-10-1944	8-31-1945
------------------------	-----------	-----------

Inspection Supervisor.

Green E. Williams	7-24-1944	9-25-1944
-------------------------	-----------	-----------

Safety Inspector.

Herbert A. Power	1-25-1943	2-20-1943
------------------------	-----------	-----------

Shipping Foremen.

Edgar L. Goodroe	8-14-1944	6- 9-1945
E. W. Sexton	9-20-1943	6-25-1945

Sub-Foremen.

Edwin R. Gossett	11- 6-1955	12- 4-1944
Lovic H. White	11- 6-1944	1- 1-1945

Truck Dispatcher.

B. J. Reed	6-21-1943	7-17-1944
------------------	-----------	-----------

Warehouse Foreman.

Lige W. Pettigrew	10-16-1944	12-11-1944
	8- 6-1945	8-29-1945

Wherefore, defendant prays that plaintiffs take nothing, and that this cause be dismissed.

OTTO ATCHLEY,
(Otto Atchley),
WHEELER, ATCHLEY &
NEWBERRY,
Attorneys for Defendant.

700 Texarkana National Bank Building,
Texarkana, Texas.

Dated: Jan. 7, 1947.

The above and foregoing Answer of the Defendant was served upon the plaintiffs in this cause by mailing a true and correct copy thereof to Messrs. Lincoln, Harris & Kennedy, Attorneys of Record for said plaintiffs, to their address in Texarkana, Texas, on the date last above shown.

OTTO ATCHLEY,
(Otto Atchley),
One of Defendant's Attorneys.

17

AMENDED ANSWER.

Filed May 24, 1947.

(Title Omitted.)

To said Honorable Court:

The defendant, with leave of the Court first obtained, files this, its amendment to its answer herein, by adding thereto the defenses asserted in the following paragraphs:

I.

Further answering, if required, defendant alleges that the activity or activities alleged by plaintiffs to have been engaged in by them, which are made the basis of this suit, were not compensable under an express provision of any written or unwritten contract in effect at the time of such activity or activities between the plaintiffs on the one hand, and the defendant on the other; nor were such activity or activities compensable by any custom or practice in effect at the time thereof, in the establishment or other place where such plaintiffs were employed.

II.

Further answering, if required, defendant alleges that any act or acts, omission or omissions, complained of by plaintiffs herein in their pleadings, the truth of their allegations with respect to which are not admitted but are expressly denied, were in good faith, and in conformity with, and in reliance on administrative regulations, orders, rulings, approvals and/or interpretations of agencies of the United States, and in conformity with and in reliance on administrative practices and/or enforcement policies of agencies of the United States with respect to the class

of employers to which this defendant belonged during plaintiffs' employment by it.

III.

Further answering, this defendant alleges that the act or acts, omission or omissions, if any, which are not admitted but expressly denied, giving rise to this suit, were in good faith, and defendant had reasonable grounds for believing that its such act or acts, omission or omissions, if any, were not a violation of the Fair Labor Standards Act of 1938, as amended.

Wherefore, defendant prays as in its original answer.

OTTO ATCHLEY,

(Otto Atchley),

WHEELER, ATCHLEY &

NEWBERRY,

Attorneys for Defendant.

700 Texarkana National Bank Building,

Texarkana, Texas.

Dated: May 23, 1947.

The above and foregoing answer was served upon plaintiffs by mailing a true and correct copy thereof to Lincoln, Harris and Kennedy, attorneys of record for plaintiffs, at their correct address in Texarkana, Texas, on the date last above written.

OTTO ATCHLEY,

(Otto Atchley),

One of Defendant's Attorneys.

ORDER FOR BILL OF PARTICULARS.

19

(Title Omitted.)

This cause came on for hearing on defendant's Motion for Bill of Particulars, and the Court being fully advised,

It is ordered that all plaintiffs and interveners in this cause, within 60 days after service of a copy of this order, service and file a Bill of Particulars of and as herein-after directed with respect to the following matters:

The term "wage rate", as used herein, refers to the regular or base rate of compensation received by hourly and monthly salaried employees.

The term "work week", as used herein, means the period of time commencing Sunday at 12:00 o'clock P. M. midnight and ending Sunday at 12:00 o'clock P. M. midnight of the following week, except as to those employees working in the Fire Department under the two-platoon system, during which time the term "work week" refers to the period of time starting at 8:00 o'clock A. M. Monday and ending at 8:00 o'clock A. M. Monday in the following week.

I.

Each plaintiff and intervener, respectively, shall allege specifically his wage rate during each particular week worked during the period from August 1, 1941, to the date suit was filed therefor, and to allege with particularity the amount of wages due plaintiffs and each intervener, respectively, for each particular work week, that is, with particularity as regards the total number of hours worked during each work week, the date of each such

work week, and the total number of hours worked during each such work week for which compensation is claimed is due each plaintiff and intervener, respectively, in this suit.

II.

A statement as to each plaintiff and intervener, separately, showing the duties of, and a description of the work performed by each plaintiff and intervener, respectively, during each particular work week and alleging the date of each such work week for which a claim for wages is made.

III.

Whether or not plaintiffs and interveners claim that the records kept by defendant accurately reflect the actual "time worked" by them, each respectively, and the money paid them, each respectively, by defendant therefor, and if they or any of them claim that such records do not so accurately reflect actual "time worked" and payments therefor, then they, each respectively, will allege specifically and particularly in what respect the records of defendant do not reflect such facts, and for what period or periods of time, giving the respective dates of each such period by work weeks as to each of them, this is true.

IV.

A statement as to each plaintiff and intervener, respectively, of whether the amount of wages allegedly due each plaintiff and intervener, respectively, for each particular work week, as required in Paragraph 1 hereof, is based on actual working time, and if not based on actual working time, then each plaintiff and intervener, respec-

tively, shall allege specifically the regular and overtime hours for which wages are claimed due which are based on waiting time, walking time, or otherwise, during each particular work week, giving the date of each such work week.

(S.)

RANDOLPH BRYANT,
Judge Presiding.

Dated: Sept. 16, 1947.

Filed Sept. 16, 1947.

21

BILL OF PARTICULARS.

(Title Omitted.)

To the Honorable Judge of said Court:

Now come the plaintiffs in the above entitled and numbered cause in response to the Court's order for a Bill of Particulars served upon the plaintiffs on the 20th day of September, A. D. 1946, and respectfully show the Court:

The following represents:

In Column 1, the name of the employee; in Column 2, the kind of work performed by the employee; in Column 3, the period of his employment, to include the beginning period and termination period; Column 4, the hourly rate of pay for each work week employed (the overtime rate of pay being one and one-half times the sums represented under "hour pay rate"); in Column 5, is represented the overtime hours due the employee per work week; in Column 6, under the heading "Amount due work week"

represents the amount of money each employee is due for overtime hours worked each work week and is arrived at by multiplying the overtime hours due each week by one and one-half times the hourly rate of pay; Columns 7 and 8 represent overtime walking hours due and overtime working hours due each employee; Column 9, under the heading "Amount total overtime due" represents the total number of dollars each employee claims as overtime, and is arrived at by multiplying the amount due each work week in Column 6 by the total number of work weeks each employee worked, as reflected in Column 3. The table does not disclose any sums of money paid to the respective employees for which they have been compensated, but represents their total claim in the last column for the overtime work weeks worked for which they have not been paid at the overtime rate, and is as follows:

1	2	3	4	5	6	7	8	9
Name	Kind of Work Done	Period Employed	Hour Pay Rate	Overtime Hours Due Per Week	Amt. Due Work Week	Walking Time Hours	Working Time Hours	Amt. Total Overtime Due
Marion E. Allen.....	Rough Carpenter	11-16-42 9-16-44	.80	4½	\$5.40	1½	3	\$550.80
Chas. C. Anderson	Carpenter	8- 2-43 10-19-45	\$1.00	4½	6.75	1½	3	776.25
John J. Allen	Rough Carpenter	8- 2-42 8-20-45	.80	4½	5.40	1½	3	842.40
W. R. Bateman.....	Carpenter	1-15-43 8-15-45	.90	4½	6.07	1½	3	807.31
Weaver J. Gholson	Rough Carpenter	10- 8-42 8-19-45	.80	4½	5.40	1½	3	599.76
Claud B. Harden.....	Carpenter	5-12-42 8-18-45	.95	4½	6.41	1½	3	1,038.42
Aubrey F. Graves.....	Carpenter	10- 6-42 10- 6-45	.90	4½	6.07	1½	3	946.92
Homer E. Conyers.....	Rough Carpenter	10- 2-42 10-26-45	.85	4½	5.73	1½	3	819.12
Haskell T. Haynes.....	Rough Carpenter	9- 1-42 9-16-45	.85	4½	5.73	1½	3	811.07
Houston C. Johnson.....	Rough Carpenter	11-25-42	.90	4½	6.07	1½	3	801.24

Zaniel Dan Lynn.....	penter	8-18-45							
	Rough Car-	7- 5-44	.80	4½	5.40	1½	3	302.40	
	penter	8-18-45							
Lawrence D. May.....	Rough Car-	5-12-42	.95	4½	6.41	1½	3	1,037.92	
	penter	8-18-45							
Arthur H. Reynolds....	Rough Car-	12-13-44	.85	4½	5.73	1½	3	189.09	
	penter	8-18-45							
Thomas J. Rike.....	Rough Car-	1- 8-45	.85	4½	5.73	1½	3	131.76	
	penter	6-20-45							
Robt. C. Robinson.....	Rough Car-	10-29-42	.80	4½	5.40	1½	3	756.00	
	penter	8-20-45							
Henry Jesse Rolf.....	Rough Car-	11- 2-42	.85	4½	5.73	1½	3	819.39	
	penter	8-18-45							
Wm. H. Runyan.....	Rough Car-	11-13-41	.90	4½	6.07	1½	3	934.78	
	penter	10-27-45							
Sam Ball Sims.....	Rough Car-	7-19-44	.80	4½	5.40	1½	3	297.00	
	penter	8-18-45							
Jim C. Story.....	Rough Car-	4-24-44	.85	4½	5.73	1½	3	418.29	
	penter	9-28-45							
Roy Edwin Strube.....	Rough Car-	9-15-43	.90	4½	6.07	1½	3	594.86	
	penter	8-18-45							

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
Alfred G. Sullivan.....	Rough Car- penter	7- 8-44 8-18-45	.85	4½	5.73	1½	3	320.88
Albert L. Thornhill.....	Rough Car- penter	6-18-42 8-20-45	.80	4½	5.40	1½	3	874.80
Floyd F. Walker	Carpenter	5-22-42 9-28-45	.85	4½	5.73	1½	3	968.37
Walter L. Yates.....	Carpenter	8-18-43 8-18-45	.90	4½	6.07	1½	3	619.14
Phillip B. Chalker	Lift Fork Dept.	12- 9-42 1- 4-44	.90	4½	6.07	1½	3	333.85
Raymond H. Chasteen..	Lift Fork Operator	10-10-42 1- 1-44	.80	4½	5.40	1½	3	340.20
Wayland W. Clark.....	Lift Fork Operator	9- 9-43 12-19-44	.90	4½	6.07	1½	3	412.76
Odis F. Clements.....	Lift Fork Operator	5-15-44 8-18-45	.80	4½	5.40	1½	3	340.20
L. V. Collom	Lift Fork Operator	2-10-43 7- 1-43	.95	4½	6.41	1½	3	128.20
Alton B. Collins.....	Lift Fork Operator	12-19-44 6- 5-45	.95	4½	6.41	1½	3	153.84

Otis L. Dill.....	Lift Fork Operator	9-10-42 10-15-45	.95	4½	6.41	1½	3	1,032.01
Harold F. Dodson.....	Lift Fork Operator	11-11-42 8-17-45	.95	4½	6.41	1½	3	910.22
Osker L. Evans.....	Lift Fork Operator	10- 9-44 7- 5-45	.95	4½	6.41	1½	3	243.58
Archie Back Fields.....	Lift Fork Operator	5-13-44 8-18-45	.90	4½	6.07	1½	3	388.48
E. Conway Garrison....	Lift Fork Operator	12-29-42 8-17-45	.90	4½	6.07	1½	3	819.45
Gerald B. Hoffman.....	Lift Fork Operator	12- 1-42 9- 7-45	.95	4½	6.41	1½	3	929.45
Melvin T. Hooser.....	Lift Fork Operator	10- 2-43 8-14-45	.95	4½	6.41	1½	3	576.65
Raymond H. Hugeons....	Lift Fork Operator	9-11-42 8-31-45	.95	4½	6.41	1½	3	934.78
John H. Jackson	Lift Fork Operator	10- 7-43 8-18-45	.95	4½	6.41	1½	3	576.65
Edgar L. Jagers.....	Lift Fork Operator	11-26-42 7- 4-45	.95	4½	6.41	1½	3	858.94
H. E. Jones	Lift Fork	12- 1-42	.95	4½	6.41	1½	3	942.27

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
	Operator	10- 5-45						
Niven S. Kyles	Lift Fork	9- 9-42	.90	4½	6.07	1½	3	928.71
	Operator	8-30-45						
Travis McDougal	Lift Fork	10- 7-43	.90	4½	6.07	1½	3	576.65
	Operator	8-19-45						
Ival L. McLarty	Lift Fork	3-13-44	.90	4½	6.07	1½	3	315.14
	Operator	3-17-45						
Thomas C. May	Lift Fork	10- 7-42	.95	4½	6.41	1½	3	999.96
	Driver	10- 7-45						
James Oscar Miller	Lift Fork	4-18-44	.90	4½	6.07	1½	3	400.62
	Operator	8-19-45						
Paul S. Morgan	Lift Fork	10-24-42	.90	4½	6.07	1½	3	934.78
	Driver	8-19-45						
Murry F. Phillips	Lift Fork	9-15-42	.90	4½	6.07	1½	3	910.50
	Operator	8-19-45						
Joe Bailey Rains	Lift Fork	12-28-42	.90	4½	6.07	1½	3	819.45
	Operator	8-19-45						
Hewitt M. Short	Lift Fork	8-24-42	.95	4½	6.41	1½	3	1,006.37
	Operator	8-31-45						

William A. Teer	Lift Fork Operator	2-11-43 8-19-45	.85	4½	5.73	1½	3	744.90
Owen F. Townsend	Lift Fork Operator	6-15-44 9- 9-45	.90	4½	6.07	1½	3	388.48
James D. Waters	Lift Fork Operator	2- 9-43 8-18-45	.90	4½	6.07	1½	3	789.10
Rufus S. Welborn	Lift Fork Operator	6- 2-42 8-18-45	.95	4½	6.41	1½	3	1,048.42
Wesley Woodrow Young	Lift Fork Operator	11-12-42 8-19-45	.90	4½	6.07	1½	3	825.52
A. C. Black	Checker	4- 6-42 8-22-43	.90	4½	6.07	1½	3	965.13
Ernest E. Cabaniss	Checker	10-14-43 8-28-45	.85	4½	5.73	1½	3	550.08
Dillard W. Cooley	Checker	4- 3-44 8- 1-45	.85	4½	5.73	1½	3	383.91
Hershel Grant	Checker	9-11-42 9-12-45	.90	4½	6.07	1½	3	940.92
Elvin Graves	Checker	8-24-42 6-15-45	.95	4½	6.41	1½	3	928.45
Edwin Ralph Gossett	Checker	4- 1-42 9-28-45	.90	4½	6.07	1½	3	965.83

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
Sam Turner Gullion....	Checker	8-15-44 10-25-45	.85	4½	5.73	1½	3	355.26
Kermit R. Halton	Checker	12- 3-44 8-19-45	.85	4½	5.73	1½	3	194.82
Raymond W. Huffman...	Checker	9-16-42 8-22-45	.90	4½	6.07	1½	3	910.30
Paul H. Keith.....	Checker	11-23-42 1-21-45	.85	4½	5.73	1½	3	641.76
H. W. Morgan	Checker	3-28-44 8-22-45	.85	4½	5.73	1½	3	401.10
Lige W. Pettigrew	Checker	1-20-43 8-29-45	.85	4½	5.73	1½	3	464.13
Dean Quada	Checker	6-14-44 8-21-45	.85	4½	5.73	1½	3	338.07
Geo. Farris Raulston....	Checker	3-17-43 11- 1-45	.90	4½	6.07	1½	3	831.59
Willis Garland Rogers.	Checker	12-12-42 10- 7-44	.85	4½	5.73	1½	3	527.16

Tom Watson Shaddix...Checker	12- 3-42	.90	4½	6.07	1½	3	904.43
	10-19-45						
Leonard A. Simmons, Jr. Checker	10-14-43	.90	4½	6.07	1½	3	576.65
	8-24-45						
Jeffie Gerard Thomas...Clerk	9-15-42	.80	4½	5.40	1½	3	799.20
	8-31-45						
Norman E. Wesmoreland Checker	5-15-44	.90	4½	6.07	1½	3	443.11
	9-30-45						
Lovic H. White .....Checker	12-29-42	.90	4½	6.07	1½	3	819.45
James Roy Birdwell...Shipper	11-24-42	.90	4½	6.07	1½	3	849.80
	8-15-45						
Edgar L. Goodroe.....Shipper	11- 4-43	.85	4½	5.73	1½	3	469.86
	6- 9-45						
Ted Harvey .....Shipper	3-20-43	.85	4½	5.73	1½	3	734.90
	9-20-45						
Emmit Warren .....Shipper	1- 4-43	.60	4½	4.05	1½	3	486.00
	10-31-45						
Clem L. Lamb .....Mechanic	1- 1-42	1.25	4½	8.43	1½	3	1,256.07
	5-19-45						
Vergle L. Bettes.....Dragline	7- 6-42	1.10	4½	7.42	1½	3	1,001.70
Operator	1-26-45						

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
William B. Clawson.....	Oiler	1-19-43 8-19-45	.70	4½	4.72	1½	3	672.76
Frank S. McCoy.....	Salvage Yd. Foreman	6-22-42 8-13-45	.95	4½	6.41	1½	3	1,048.42
Roscoe C. Nowlin.....	Salvage Yd. Foreman	6-13-44 6- 5-45	1.00	4½	6.75	1½	3	1,012.50
Adkins, Joe	Loader & Unloader	8-21-43 10-22-45	.60	4½	4.05	1½	3	457.65
Corea Allen	Loader & Unloader	3-22-45 8-17-45	.60	4½	4.05	1½	3	89.10
Laura Allen	Loader & Unloader	9-10-42 4- 1-43	.55	4½	3.712	1½	3	460.29
Leroy Banks	Loader & Unloader	11-28-43 10-27-45	.55	4½	3.712	1½	3	567.94
S. C. Banks.....	Loader & Unloader	11-17-44 8-19-45	.55	4½	3.375	1½	3	131.63
Robt. Lee Barnes.....	Loader & Unloader	11-19-42	.50	4½	3.375	1½	3	442.13
Ben Bell	Laborer	12-31-42 10-31-45	.50	4½	3.375	1½	3	496.12

10-31-45

Primes B. Block	.....Laborer	1-10-45	.50	4½	3.375	1½	3	33.75
		3-23-45						
Jewell E. Boldon	.....Laborer	11-27-42	.70	4½	4.05	1½	3	615.60
		10-19-45						
Henry Booth, Jr.	.....Laborer	12-23-42	.55	4½	3.712	1½	3	460.28
		11-10-45						
Robert Booth	.....Laborer	4-17-43	.50	4½	3.375	1½	3	101.63
		11-10-43						
Curtis Briley	.....Laborer	1942	.60	4½	4.05	1½	3	202.50
		1943						
Robert Brown	.....Loader & Unloader	2-22-44	.55	4½	3.712	1½	3	326.66
		10-20-45						
Henry Britt	.....Laborer	9- 9-43	.50	4½	3.375	1½	3	378.00
		11- 2-45						
Alonzo Caldwell	.....Laborer	12-19-42	.55	4½	3.712	1½	3	508.54
		8-24-45						
Willie D. Carroll	.....Laborer	12-23-44	.55	4½	3.712	1½	3	148.48
		9-31-45						
Rayfield Davis	.....Laborer	8- 9-41	.90	4½	6.07	1½	3	242.80
		2- 5-43						
Paris Chapple	.....Loader & Unloader	2- 4-43	.55	4½	3.712	1½	3	534.53
		10-25-45						

1	2	3	4	5	6	7	8	9	
Name	Kind of Work Done	Period Employed	Hour Pay Rate	Overtime Hours Due Per Week	Amt. Due Work Week	Walking Time Hours	Working Time Hours	Amt. Total Overtime Due	
Henry C. Clement.....	Laborer	10- 5-43 8-26-45	.60	4 1/2	4.05	1 1/2	3	368.55	
James Collins	Loader & Unloader	1-15-43 10-19-45	.60	4 1/2	4.95	1 1/2	3	591.30	
David Hawkins	Laborer	7-22-43 10-15-45	.60	4 1/2	4.05	1 1/2	3	477.90	
C. G. Compton	Laborer	2- 1-43 8-13-45	.50	4 1/2	3.375	1 1/2	3	422.13	
Jolly C. Crocker	Loader & Unloader	11-21-44 8-31-45	.50	4 1/2	3.375	1 1/2	3	124.88	36
Andrew Robt. Brown...	Loader & Unloader	1-27-43 8-27-45	.55	4 1/2	3.712	1 1/2	3	489.98	
William Crockett, Jr...	Loader	1-30-45 7-20-45	.50	4 1/2	3.375	1 1/2	3	84.38	
Johnnie Donell	Loader & Unloader	11-24-42 8-28-45	.55	4 1/2	3.712	1 1/2	3	508.54	
Albert Frederick	Loader		.50	4 1/2	3.375	1 1/2	3	155.25	
Lee Foster	Loader & Unloader	9- 7-43 8-17-45	.50	4 1/2	3.375	1 1/2	3	334.13	
Samuel Lee Franklin...	Loader & Unloader	Jan. 1943 Dec. 1944	.50	4 1/2	3.375	1 1/2	3	303.75	
T. A. Galbalth	Laborer	1- 8-45 9-14-45	.54	4 1/2	3.375	1 1/2	3	121.50	
James Germany	Laborer	9- 8-42 7-17-45	.60	4 1/2	4.05	1 1/2	3	357.55	
Nathaniel Graham	Laborer	6- 1-42 10-29-45	.50	4 1/2	3.375	1 1/2	3	597.375	
Charlie Green	Laborer	12-11-44 3-18-45	.50	4 1/2	3.375	1 1/2	3	47.25	
Elone Green	Laborer	10-19-45 7- 4-45	.50	4 1/2	3.375	1 1/2	3	124.88	
Earnest Grundy	Loading & Unloading	May 1942 10- 2-45	.50	4 1/2	3.375	1 1/2	3	597.38	
Curtis Heath	Laborer	7- 3-42 4-17-43	.50	4 1/2	3.375	1 1/2	3	138.38	
Grover C. Heath	Laborer	10- 9-42 10- 2-45	.50	4 1/2	3.375	1 1/2	3	522.35	
John W. Heath	Laborer	7-15-43 9-28-44	.50	4 1/2	3.375	1 1/2	3	212.13	
Rastus G. Henderson...	Laborer	12-28-41	.50	4 1/2	3.37	1 1/2	3	535.83	

1	2	3	4	5	6	7	8	9
Name	Kind of Work Done	Period Employed	Hour Pay Rate	Overtime Hours Due Per Week	Amt. Due Work Week	Walking Time Hours	Working Time Hours	Amt. Total Overtime Due
Jesse T. Hightower	Laborer	5- 1-45 9-28-45	.55	4½	3.71	1½	3	77.91
Tom Henry Harris	Laborer	6-19-42 7-30-45	.60	4½	4.05	1½	3	648.00
Avance Haskins	Loader & Unloader	10-12-43 8-14-45	.50	4½	3.37	1½	3	187.72
Henry Hollins	Laborer	8-18-42 8-18-44	.55	4½	3.71	1½	3	385.84
Clyde House	Laborer	Aug. 1943 Nov. 1944	.50	4½	3.37	1½	3	215.88
George W. House	Loader & Unloader	2-18-44 12- 8-44	.50	4½	3.37	1½	3	138.17
Will Hubbard	Loader & Unloader	8-18-43 10-19-45	.60	4½	4.05	1½	3	457.65
Albert Hutchison	Laborer	4-16-43 12-30-43	.50	4½	3.37	1½	3	124.69
Fred Jackson	Laborer	7-42 1943	.50	4½	3.37	1½	3	168.50
Geo. W. Jenkins	Loader	3-10-43 9- 7-45	.60	4½	4.05	1½	3	518.40
M. C. Jiles	Laborer	10-20-43 11- 2-45	.55	4½	3.71	1½	3	396.97
Charles W. Johnson	Laborer	12-44 10-17-45	.50	4½	3.37	1½	3	138.17
Johnnie Johnson	Laborer	11-25-44 7-24-45	.50	4½	3.37	1½	3	111.21
L. V. Johnson	Loader	3-17-43 5- 5-45	.55	4½	3.71	1½	3	411.81
Walter M. Johnson	Laborer	9- 8-42 4-10-45	.50	4½	3.37	1½	3	461.69
Ike Jones	Loader & Unloader	11-26-42 Jan. 1945	.50	4½	3.37	1½	3	375.07
Roy King	Laborer	9-23-43 7-1945	.50	4½	3.37	1½	3	313.41
John Kinsey	Laborer	12-1942 3-12-43	.50	4½	3.37	1½	3	57.29
Clamon Knight	Laborer	2-14-44 10-12-45	.50	4½	3.37	1½	3	293.19
Thomas Knight	Laborer	2-16-43 8-17-45	.50	4½	3.37	1½	3	421.36
Oscar L. Knight	Laborer	9- 8-42 8-14-45	.55	4½	3.71	1½	3	560.21

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
Jeffie E. Lewis	Laborer	1- 2-45 8-17-45	.50	4 1/2	3.37	1 1/2	3	111.21
Henry P. Livingston	Laborer	11- 2-43 11- 5-45	.60	4 1/2	4.05	1 1/2	3	425.25
Bennie Lockett	Loader	9- 9-44 9-30-45	.55	4 1/2	3.71	1 1/2	3	200.34
Willie R. McDaniel	Loading & Unloading	3-16-42 6- 6-45	.50	4 1/2	3.37	1 1/2	3	390.92
Joe M. McPherson	Laborer	10- 1-43 Mar. '44	.50	4 1/2	3.37	1 1/2	3	114.58
Dock J. Mack	Laborer	7-20-44 9-30-45	.50	4 1/2	3.37	1 1/2	3	208.94
Lee Maxwell	Laborer	11-28-42 10-14-45	.55	4 1/2	4.05	1 1/2	3	603.45
James Martin	Laborer	3-16-45 9-21-45	.55	4 1/2	4.05	1 1/2	3	101.35
Willie Marshall	Laborer	5- 5-44 10-31-45	.50	4 1/2	3.37	1 1/2	3	266.23
R. D. Marlar	Laborer	4-20-45 9-28-45	.50	4 1/2	3.37	1 1/2	3	77.51

O. D. Miller	Laborer	8-28-43 8-16-45	.60	4 1/2	4.05	1 1/2	3	356.40
Sam Mitchell, Jr.	Loader & Unloader	6- 1-42 8-30-45	.50	4 1/2	3.37	1 1/2	3	566.18
Arthur Moreane	Laborer	6- 1-44 9-10-45	.55	4 1/2	4.05	1 1/2	3	275.40
Roy Morane	Laborer	6- 1-44 10-10-45	.55	4 1/2	4.05	1 1/2	3	283.50
Johnny Morine	Laborer	3-24-44 7-27-45	.50	4 1/2	3.37	1 1/2	3	239.27
Lawson Muldrew	Laborer	6-17-42 11- 1-45	.57	4 1/2	3.71	1 1/2	3	460.04
L. V. Munson	Laborer	12-27-44 Aug. 1945	.55	4 1/2	4.05	1 1/2	3	125.55
Lucille E. Neal	Loader & Unloader	3- 1-45 8- 1-45	.50	4 1/2	3.37	1 1/2	3	70.77
Sam Neal	Loader	4- 1-43 9-43	.50	4 1/2	3.37	1 1/2	3	74.14
Prentice Oliver	Laborer	6-28-44 10-19-45	.55	4 1/2	4.05	1 1/2	3	291.60
Sidney Parker	Laborer	6-18-42 7- 1-45	.57	4 1/2	4.05	1 1/2	3	643.95

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
Jessie B. Parks	Loader & Unloader	10-23-43 11- 2-45	.55	4 1/2	4.05	1 1/2	3	425.25
Mitchell M. Paxton	Laborer	10- 5-42 10- 2-45	.50	4 1/2	3.37	1 1/2	3	525.72
Tom Paxton	Loader & Unloader	8- 5-43 2-15-45	.60	4 1/2	4.05	1 1/2	3	384.75
Hursel Perry	Loader & Unloader	1- 1-45 Aug. 1945.	.60	4 1/2	4.05	1 1/2	3	125.55
Kiran Jim Pickens	Loader & Unloader	11- 5-43 2-18-44	.50	4 1/2	3.37	1 1/2	3	50.55
Fred Powell	Laborer	6-18-42 10-31-45	.55	4 1/2	3.71	1 1/2	3	652.96
Austin M. Rattler	Laborer	8- 5-43 9- 7-45	.55	4 1/2	3.71	1 1/2	3	408.10
J. D. Reece	Laborer	2- 1-44 10-30-45	.55	4 1/2	3.71	1 1/2	3	337.61
Janie W. Roberson	Loader & Unloader	4-22-44 12-12-44	.50	4 1/2	3.37	1 1/2	3	101.21
Marvin A. Rogers	Loader & Unloader	12-14-44 10- 1-45	.50	4 1/2	3.37	1 1/2	3	262.75
Henry Rose	Loader & Unloader	10-23-43 7-21-45	.65	4 1/2	4.29	1 1/2	3	278.83
Stephen W. Salisbury	Laborer	4-20-44 10-30-45	.50	4 1/2	3.37	1 1/2	3	266.62
Freeman Sanders	Laborer	2-12-43 9- 1-45	.60	4 1/2	3.37	1 1/2	3	538.65
Shelie James	Loader	7-15-44 4-15-45	.55	4 1/2	3.712	1 1/2	3	144.77
James H. L. Shelton	Laborer	8-28-43 9-28-45	.55	4 1/2	3.71	1 1/2	3	363.78
Jeff Charley Sims	Laborer	8- 1-43 11- 1-45	.55	4 1/2	3.71	1 1/2	3	415.74
George Satterwhite	Laborer	6- 1-42 8- 1-45	.50	4 1/2	3.375	1 1/2	3	556.87
Enoch Smith	Loader	4- 6-43 8- 1-45	.55	4 1/2	3.71	1 1/2	3	449.15
Frank. Smith	Loader	8- 1-42 11- 1-45	.65	4 1/2	4.29	1 1/2	3	725.01
Fred Smith	Laborer	2- 3-43 5- 1-45	.50	4 1/2	3.375	1 1/2	3	344.25
Audrey M. W. Stanmore	Loader	3-11-44 May 1945	.50	4 1/2	3.37	1 1/2	3	199.13

1	2	3	4	5	6	7	8	9
Name	Kind of Work Done	Period Employed	Hour Pay Rate	Overtime Hours Due Per Week	Amt. Due Work Week	Walking Time Hours	Working Time Hours	Amt. Total Overtime Due
Henry Stanmore	Loader & Unloader	Dec. 1942 Jan. 1944	.50	4 1/2	3.37	1 1/2	3	97.88
Vernon Stanmore	Loader & Unloader	11- 5-42 9-17-45	.55	4 1/2	3.712	1 1/2	3	531.52
Perry Stiger	Laborer	11- 1-43 8-25-45	.50	4 1/2	3.37	1 1/2	3	303.75
Roy Steger	Loader & Unloader	10-14-43 8-24-45	.55	4 1/2	3.712	1 1/2	3	350.06
Thomas Stephens	Laborer	1- 1-45 6- 1-45	.50	4 1/2	3.37	1 1/2	3	57.38
David Stephens	Laborer	7- 1-43 6- 1-45	.60	4 1/2	4.05	1 1/2	3	405.00
R. T. Strongs	Laborer	3-29-43 12- 1-45	.55	4 1/2	3.712	1 1/2	3	512.27
Leroy Terry	Loader & Unloader	11-28-44 1-26-45	.55	4 1/2	3.712	1 1/2	3	29.69
Mart Thompson	Laborer	1-27-43 9-28-45	.55	4 1/2	3.712	1 1/2	3	519.68
Elton Turner	Laborer	11-28-42 10-14-45	.55	4 1/2	3.712	1 1/2	3	553.09
Bishop Tyson	Laborer	7-17-42 10-31-45	.55	4 1/2	3.712	1 1/2	3	541.95
Barix Walker	Laborer	8-14-42 9-29-44	.50	4 1/2	3.375	1 1/2	3	371.25
George Walker	Loader & Unloader	9- 5-43 3-23-45	.55	4 1/2	3.712	1 1/2	3	304.38
Sam Walker	Loader	10-27-43 3-10-45	.55	4 1/2	3.712	1 1/2	3	263.41
Lewis F. Walters	Laborer	7-19-42 8-15-44	.50	4 1/2	3.375	1 1/2	3	408.38
Bartten Warren	Laborer	2- 4-44 8-10-45	.50	4 1/2	3.37	1 1/2	3	266.63
Gus W. Warren	Loader & Unloader	11-24-42 10-13-43	.60	4 1/2	4.05	1 1/2	3	186.30
George Warren	Shipper	1- 4-43 11-23-45	.60	4 1/2	4.05	1 1/2	3	607.50
Howard Warren	Shipper	10-12-42 3-31-43	.60	4 1/2	4.05	1 1/2	3	368.55
Marion Washington	Laborer	11- 4-44 8-21-45	.50	4 1/2	3.375	1 1/2	3	141.75
James R. Watlington	Laborer	6-19-42 11- 1-45	.50	4 1/2	3.375	1 1/2	3	597.38

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1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
Ruth Watts Wells	Loading & Unloading	5- 1-44 8- 1-45	.50	4½	3.375	1½	.3	212.63
Joseph White	Laborer	10-10-43 9- 1-44	.70	4½	4.725	1½	3	222.08
Arthur Williams	Laborer	7- 5-42 5-10-45	.60	4½	4.05	1½	3	604.40
Bryant H. Williams	Laborer	2-16-43 3-19-45	.50	4½	3.375	1½	3	667.88
Melvin Winters	Laborer	5- 1-42 10-25-45	.55	4½	3.71	1½	3	478.59
Reather W. Wither- spoon	Loading & Unloading	3-10-44 7- 7-45	.50	4½	3.37	1½	3	246.01
Ollie Young	Laborer	1-21-44 12- 1-44	.50	4½	3.375	1½	3	219.38
Joe Willie Yancy	Loader & Unloader	5-30-44 10-19-45	.60	4½	4.05	1½	3	368.55
Augustus Atkins	Laborer	9- 2-43 8-21-45	.50	4½	3.37	1½	3	64.03
Verdie M. Anderson	Loader	8-31-44	.40	4½	2.78	1½	3	129.60

R. A. Anderson	Loader	8-17-45 3-19-45 10- 2-45	.50	4½	3.37	1½	3	94.36
C. A. Anderson	Lift Fork	12-13-44 5-31-45	.80	4½	5.40	1½	3	129.60
H. D. Alston	Lift Fork	11-23-42 8-30-45	.45	4½	3.08	1½	3	434.28
Bill Abbott	Truck Driver	9-18-43 10-24-44	1.10	4½	8.75	1½	3	398.25
James P. Barnes	Loader	11- 4-43 8-22-45	.85	4½	5.73	1½	3	492.78
Willie Bonner	Loader & Unloader	7-17-42 11- 4-45	.80	4½	5.40	1½	3	928.80
William H. Byrd	Loader	12-21-42 5-17-45	.50	4½	3.37	1½	3	384.18
Robert S. Brown	Loader	9-13-44 8-17-45	.50	4½	3.37	1½	3	110.11
Angeline J. Brown	Loader	3- 9-44 9- 4-45	.50	4½	3.37	1½	3	131.43
Alom Bradoes			..	..	..	..	..	..
Jessie Brown	Loader & Unloader	10-23-43 8-17-45	.55	4½	3.71	1½	3	341.32

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
Fred Butler	Loader	11-14-44 9-10-45	.50	4 1/2	3.37	1 1/2	3	110.11
Veasey C. Buttram	Truck Driver	10-18-43 8-28-45	.80	4 1/2	5.40	1 1/2	3	507.60
Roy Brown	Loader	8- 8-45 8-18-45	.50	4 1/2	3.37	1 1/2	3	3.37
Lush Brown	Loader	8-16-44 8-17-45	.55	4 1/2	3.71	1 1/2	3	185.50
Cephas Bacon	Loader	7- 1-44 8-16-45	.50	4 1/2	3.37	1 1/2	3	104.47
Jos. F. Bayless	Lift Fork	7- 2-42 11- 4-45	.85	4 1/2	5.75	1 1/2	3	767.82
Zarrer Becks	Loader	8- 4-43 8-17-45	.50	4 1/2	3.37	1 1/2	3	138.17
Joe J. Clayton	Truck Driver	10-23-42 9- 4-45	.90	4 1/2	6.07	1 1/2	3	904.43
Malon Compton	Loader	7-26-45 8-17-45	.50	4 1/2	3.37	1 1/2	3	13.48
I. Z. Compton			..	...	...	...	...	.....
W. A. Colliums	Truck Driver	9- 3-42 8-20-45	.90	4 1/2	6.07	1 1/2	3	922.64
Merrell C. Clayton	Rough Car- penter	9-11-42 10-22-45	.90	4 1/2	6.07	1 1/2	3	917.27
Henderson C. Chesshir	Loader	3-17-45 8-22-45	.50	4 1/2	3.37	1 1/2	3	74.14
Samuel B. Cheatam	Loader	12-14-44 8-17-45	.50	4 1/2	3.37	1 1/2	3	117.95
Roosevelt Cheatham	Loader	11-11-43 8-21-44	.50	4 1/2	3.37	1 1/2	3	134.80
Loyd Chatman	Loader	8-17-43 10-15-45	.55	4 1/2	3.71	1 1/2	3	304.22
Louis L. Caver	Lift Fork	7-28-44 5- 1-45	.80	4 1/2	5.40	1 1/2	3	210.60
W. B. Carr	Truck Driver	7- 9-42 9- 5-45	.90	4 1/2	6.07	1 1/2	3	1,001.55
Thomas E. Carver	Truck Driver	6- 8-42 9-10-45	.80	4 1/2	5.40	1 1/2	3	216.00
David L. Campbell	Loader	10-23-43 5-14-45	.55	4 1/2	3.71	1 1/2	3	67.78
J. C. Cabaniss			..	...	...	...	...	.....

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
John Henry Cooper	Loader & Unloader	7-23-42 8-17-45	.55	4½	3.71	1½	3	585.78
Jim Daniels	Loader & Unloader	5-29-44 9-23-44	.50	4½	3.37	1½	3	64.03
F. C. Davis	Loader & Unloader	8- 8-45 8-18-45	.50	4½	3.37	1½	3	3.37
J. K. Daniels	Truck Driver	11- 1-43 11- 4-45	.80	4½	5.40	1½	3	421.20
Lee Ertor Davis	Loader	9- 9-43 8-17-45	.50	4½	3.37	1½	3	80.88
Russell E. DeVance	Loader & Unloader	7- 5-44 9-24-45	.50	4½	3.37	1½	3	104.47
Francis N. Dodson	Loader & Unloader	3-26-45 10- 2-45	.50	4½	3.37	1½	3	90.99
Roosevelt Dickerson	Loader & Unloader	8-10-45 8-17-45	.55	4½	3.71	1½	3	3.71
M. D. Dickerson	Loader & Unloader	4-27-44 4-20-45	.50	4½	3.37	1½	3	171.87
H. T. Dogen								
Charlie L. Drake	Truck Driver	10-27-42 8-20-45	.80	4½	5.40	1½	3	777.60
Willie Dunn	Loader	3-23-43 8-24-45	.50	4½	3.37	1½	3	296.56
W. A. Duncan, Sr.	Lift Fork	6-12-42 8-22-45	.80	4½	5.40	1½	3	885.60
B. W. Dupree	Lift Fork	9-24-43 8-17-45	.95	4½	6.41	1½	3	621.77
Elemo Durham	Loader	5- 9-45 8-17-45	.50	4½	3.37	1½	3	47.18
Jimmie Jacob Durham	Lift Fork	3-25-43 6- 5-44	.80	4½	5.40	1½	3	329.40
Robert E. Elam	Truck Driver	9-30-44 4-14-45	.90	4½	6.07	1½	3	169.96
J. Elliott	Truck Driver	7-30-42 8-20-45	.95	4½	6.41	1½	3	1,006.37
Mattie E. Ellis	Loader & Unloader	10-23-43 12- 8-44	.60	4½	4.05	1½	3	238.95
Felton Epps	Loader & Unloader	11-28-42 8-21-45	.50	4½	3.37	1½	3	471.80
Howard Edwards	Loader & Unloader	3-30-43 1-15-45	.50	4½	3.37	1½	3	213.41

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
Quincy W. Foshee	Truck Driver	7- 9-42 10-22-45	.95	4½	6.41	1½	3	1,092.52
Theopris Fisher	Loader	8- 1-45 8-17-45	.50	4½	3.37	1½	3	6.74
Clance Frinch			..	...	...	...	..	.....
Bernice Golden			..	...	...	...	..	.....
Ozay Garner	Loader	8- 8-45 8-17-45	.55	4½	3.71	1½	3	3.71
L. P. Garner	Carpenter	6-15-42 10- 5-45	.85	4½	5.73	1½	3	985.56
Clarence D. Gantt	Loader	12-22-42 8-17-45	.80	4½	5.40	1½	3	734.40
William M. Grant			..	...	...	...	..	.....
John W. Green	Truck Driver	9-19-43 6- 1-45	.90	4½	6.07	1½	3	534.16
Hugh O. Green	Truck Driver	4- 6-44 8-22-45	.85	4½	5.73	1½	3	401.10
George Greer	Truck Driver	8-20-42 9-21-45	.75	4½	5.06	1½	3	814.66
Zack T. Griffin	Loader	1-26-43 7-31-44	.50	4½	3.37	1½	3	266.23
J. C. Hadley	Loader	10-12-44 1-16-45	.50	4½	3.37	1½	3	47.18
Walter U. Harris	Loader	4- 6-43 8-17-45	.55	4½	3.71	1½	3	255.99
Arvel Haskins			..	...	...	...	..	.....
Virgie Hatley	Loader	10-19-43 8-24-45	.50	4½	3.37	1½	3	141.54
Webber Hawkins	Loader	9- 8-42 11- 4-45	.55	4½	3.71	1½	3	607.94
Nathan Haywood	Loader	10-13-42 9- 7-45	.55	4½	3.71	1½	3	560.21
Bernice Henderson	Loader	11-25-44 8-18-45	.50	4½	3.37	1½	3	121.32
Joe Henderson	Loader	10-30-43 9-26-45	.50	4½	3.37	1½	3	330.26
Willie R. Henderson	Loader	6-12-44 8-17-45	.40	4½	2.70	1½	3	153.90
Preston Hervey	Loader	4-25-44 8-17-45	.55	4½	3.71	1½	3	255.91
Preston Hilburn			..	...	...	...	..	.....

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
C. L. Hood	Truck Driver	6-18-42 8-20-45	.95	4½	6.41	1½	3	1,044.83
James G. Hollins	Loader	11-21-44 1- 1-45	.55	4½	3.71	1½	3	163.24
Olgie C. Houston	Truck Driver	7-22-42 6- 9-45	.95	4½	6.41	1½	3	955.09
Hulie S. Hubbard	Loader	11- 9-42 8-17-45	.55	4½	3.71	1½	3	452.62
Gracie T. Hufstetler	Truck Driver	6-16-42 9- 7-45	.90	4½	6.07	1½	3	1,025.83
E. D. Hyman								
Morris S. James	Truck Driver	11-16-42 8-20-45	.95	4½	6.07	1½	3	855.87
Herbert Johnson	Truck Driver	5-24-44 8-20-45	.95	4½	6.07	1½	3	376.34
Robert Johnson	Loader	5-25-42 12- 2-43	.50	4½	3.37	1½	3	266.23
J. O. Jones	Truck Driver	6-15-42 9-13-45	.95	4½	6.07	1½	3	1,025.83
Paul Jones	Loader	8- 4-45 9-11-45	.50	4½	3.37	1½	3	16.85
Judge Kenner	Loader	1-11-45 11- 4-45	.50	4½	3.37	1½	3	144.91
Willie B. Kenner	Loader	3-17-45 7- 2-45	.40	4½	2.70	1½	3	40.50
James A. Kingston	Carpenter	7-10-42 11- 4-45	.90	4½	6.07	1½	3	990.11
William Lee	Truck Driver	10-30-42 8-22-45	1.00	4½	6.75	1½	3	972.00
Conraid Leonard	Loader	8- 1-45 8-17-45	.50	4½	3.37	1½	3	6.74
Jess E. Lewis								
Roosevelt Lillard	Loader	7-17-44 11- 4-45	.50	4½	3.37	1½	3	229.66
Martin Lincoln	Loader	11- 8-44 1-26-45	.50	4½	3.37	1½	3	37.07
Luther D. Litton, Jr.	Lift Fork	7- 8-42 2- 5-45	.90	4½	6.07	1½	3	713.38
C. E. Lonsens								
Foster Lowers								

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1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
Jack McFarland	Loader	2-24-44 8-17-45	.55	4½	3.71	1½	3	277.25
James H. McGee	Truck Driver	8-18-43 8-20-45	.95	4½	6.41	1½	3	660.23
T. B. McGorry	Truck Driver	11- 3-42 8-20-45	.95	4½	6.41	1½	3	923.04
Marion Martin	Loader	8-18-43 8-23-45	.60	4½	4.05	1½	3	417.15
Willie H. Miles	Loader	8-22-44 8-21-45	.55	4½	3.71	1½	3	185.50
Horace M. Millaway	Truck Driver	12-17-42 8-20-45	.95	4½	6.41	1½	3	878.17
Clarence Mitchell	Loader	6-17-42 7-14-45	.55	4½	3.71	1½	3	601.02
W. F. Mitchell	Loader	10-14-43 10-12-45	.55	4½	3.71	1½	3	382.13
Johnnie Modloer								
Allen D. Nash	Truck Driver	8-12-42 8-22-45	1.00	4½	6.75	1½	3	1,046.25
Neal Minion	Loader	11-24-42 8-17-45	.55	4½	3.71	1½	3	519.40
Thomas R. Newsom	Clerk	3-29-43 8-31-45	1.00	4½	6.75	1½	3	830.25
C. C. Norris	Truck	12-10-42 8-18-45	.95	4½	6.41	1½	3	783.58
Nortoin Thomas	Checker	9- 2-43 9- 7-45	.80	4½	5.40	1½	3	572.40
G. D. Nugam								
Edgar B. Owens	Truck Driver	10-28-42 8-18-45	.85	4½	5.73	1½	3	779.28
Norman L. Parker	Truck Driver	10- 7-43 8-20-45	.95	4½	6.41	1½	3	608.95
H. E. Payne	Truck Driver	11-28-42 9- 4-45	.95	4½	6.41	1½	3	929.45
Will Pennington	Laborer	10-14-43 9-10-45	.55	4½	3.71	1½	3	563.52
John Perkins	Laborer	3-23-45 9-21-45	.50	4½	3.37	1½	3	87.62
Jewel Reeves	Checker	10- 9-43 8-19-45	.85	4½	5.73	1½	3	544.35

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due	
Mose Rhymes	Laborer	11- 7-42 8-17-45	.50	4½	3.37	1½	3	478.54	
Will Richardson	Laborer	8- 1-45 8-17-45	.50	4½	3.37	1½	3	6.74	
John D. Richie	Checker	10-19-43 8-22-45	.85	4½	5.73	1½	3	532.89	
William R. Rogers	Checker	9-22-43 8-20-45	.85	4½	5.73	1½	3	555.81	
Sam E. Roper	Lift Fork	12-16-44 8-20-45	.85	4½	5.73	1½	3	194.12	58
Joe Sears	Checker	3- 9-43 9-15-45	.70	4½	4.72	1½	3	623.04	
Pauline Simmons	Laborer	8-26-44 8-17-45	.40	4½	2.70	1½	3	132.30	
O. I. Skinner	Loader	10-25-44 8-16-45	.80	4½	5.40	1½	3	216.00	
John E. Slimer			..	...	...	...	..	.....
John A. Smith	Truck Driver	9-13-44 11-15-44	.80	4½	5.40	1½	3	48.60	
Lafayette Smith	Loader	3-16-43 10- 2-45	.50	4½	3.37	1½	3	444.84	
Raphiel Spencer	Loader	8- 4-42 5-21-45	.50	4½	3.37	1½	3	492.02	
Glynn Stephens	Truck Driver	6-22-42 11- 4-45	1.00	4½	6.75	1½	3	1,181.25	
Essie L. Stewart	Laborer	2- 2-45 8-17-45	.40	4½	2.70	1½	3	75.60	
M. D. Stewart	Truck Driver	7-13-42 8-23-45	.90	4½	6.07	1½	3	971.20	
O. L. Stone	Truck Driver	6- 2-42 8- 6-45	.95	4½	6.41	1½	3	1,064.06	59
W. C. Sutton	Truck Driver	9- 3-42 8-22-45	.85	4½	5.73	1½	3	876.69	
Wyven E. Tate	Truck Driver	10- 9-42 7- 1-45	.85	4½	5.73	1½	3	509.97	
Copeland Thompson	Loader	6-22-42 7- 3-44	.50	4½	3.37	1½	3	353.85	
Ruben Walker	Loader	3-20-43 8-17-45	.60	4½	4.05	1½	3	498.15	
Buck Walter	Loader & Unloader	5-28-43 8-17-45	.55	4½	3.71	1½	3	419.23	

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
A. J. Warren	Loader & Unloader	8-14-44 8-17-45	.55	4½	3.71	1½	3	196.63
Leroy Warren	Loader & Unloader	7-20-44 11- 4-45	.50	4½	3.37	1½	3	225.79
Jeff. Washington	Loader & Unloader	7-19-45 8-17-45	.50	4½	3.37	1½	3	13.48
Sylvester Washton	Loader & Unloader	10-21-43 8-17-45	.50	4½	3.37	1½	3	313.41
John L. Watts	Loader & Unloader	8- 9-44 8-17-45	.55	4½	3.71	1½	3	200.34
James H. Watkins	Truck Driver	7-10-42 6-20-45	.95	4½	6.41	1½	3	1,044.83
Everett Wells	Loader & Unloader	3-21-45 8-17-45	.50	4½	3.37	1½	3	74.15
Oswell Wells	Loader & Unloader	7-27-44 8-17-45	.60	4½	4.05	1½	3	214.65
W. E. Whited	Loader & Unloader	4-12-45 8-17-45	.50	4½	3.37	1½	3	60.66
Harold Whitely	Loader & Unloader	4-18-44 8-21-45	.50	4½	3.37	1½	3	229.16
W. M. Wilbanks	Truck Driver	9-20-43 2-27-45	.90	4½	6.07	1½	3	335.25
John C. Wilson	Loader & Unloader	10- 8-43 8-17-45	.50	4½	3.37	1½	3	320.15
Luke Wilson	Loader & Unloader	11-24-42 7-13-44	.55	4½	3.71	1½	3	315.35
Nurell Willis	Loader & Unloader	1- 4-45 10- 1-45	.55	4½	3.71	1½	3	140.98
L. H. Williams	Truck Driver	6-24-43 9- 3-45	.95	4½	6.41	1½	3	737.15
Arthur Williams	Loader & Unloader	3-10-44 4-24-45	.55	4½	3.71	1½	3	215.18
Ben Williams, Jr.	Loader & Unloader	7-13-45 8-17-45	.50	4½	3.37	1½	3	16.85
Green E. Williams	Truck Driver	8-20-41 8-23-45	.90	4½	6.07	1½	3	983.34
Tom Williams	Loader	7- 1-42 1-11-45 5-14-45	.50	4½	3.37	1½	3	57.29
Vernell Williams	Loader	12- 1-42 12-24-43	.50	4½	3.37	1½	3	185.35
Roy Wrather								

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
Lowell P. Wright	Truck	9- 9-42	.90	4½	6.07	1½	3	922.64
	Driver	8-20-45						
W. L. Yates	Lift Fork	8-18-43	.85	4½	5.73	1½	3	584.46
		8-19-45						
William A. Adams	Truck	6-20-42	1.00	4½	6.75	1½	3	1,103.50
	Driver	8-20-45						
James E. Abercrombie	Truck	11-10-42	.90	4½	6.07	1½	3	928.71
	Driver	9-28-45						
Roy L. Balmain	Truck	2-14-44	.80	4½	5.40	1½	3	432.00
	Driver	9- 7-45						
Farring F. Barnett	Truck	7-20-42	.80	4½	5.40	1½	3	853.00
	Driver	8-21-45						
Homer F. Bearden	Truck	10- 6-42	.90	4½	6.07	1½	3	959.06
	Driver	10-19-45						
Jewel L. Beck	Truck	4- 1-42	.90	4½	6.07	1½	3	491.67
	Driver	10-22-43						
Gordon Raymond Bell	Truck	7- 5-42	1.00	4½	6.75	1½	3	1,053.00
	Driver	7- 5-45						
Antonia M. Birtcher	Truck	6- 6-42	.95	4½	6.41	1½	3	1,127.16
	Driver	10-27-45						
L. W. Birtcher	Truck	9- 9-42	.90	4½	6.07	1½	3	940.85
	Driver	10- 1-45						
Oscar Jack Boddie	Truck	11-22-43	.85	4½	5.73	1½	3	509.97
	Driver	8-20-45						
Raymond V. Branum	Truck	4- 1-42	1.00	4½	6.75	1½	3	1,073.25
	Driver	4-15-45						
James Braxton	Truck	6-30-42	.55	4½	3.71	1½	3	597.31
	Driver	8-17-45						
James C. Brazell	Truck	7-30-43	1.00	4½	6.75	1½	3	1,026.00
	Driver	6-30-45						
Clarence W. Brewer	Truck	7-17-42	.90	4½	6.07	1½	3	675.91
	Driver	9-17-44						
Thomas L. Brown	Truck	8- 8-42	.90	4½	6.07	1½	3	934.78
	Driver	8-14-45						
Edward L. Brooks	Truck	7-14-42	.90	4½	6.07	1½	3	473.46
	Driver	1- 8-44						
James L. Chance	Truck	11-13-42	.90	4½	6.07	1½	3	861.94
	Driver	8-30-45						
Willie Brent Chelf	Truck	6-18-42	.90	4½	6.07	1½	3	1,001.55
	Driver	8-24-44						
Horace A. Clements	Truck	4-21-44	.85	4½	5.73	1½	3	349.53
	Driver	6-14-45						

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
Maurice Lee Collins.....	Truck Driver	7- 7-42 7-20-45	.95	4 1/2	6.41	1 1/2	3	1,070.47
Ardell M. Clements....	Truck Driver	May 1942 8-28-45	.95	4 1/2	6.41	1 1/2	3	1,057.65
Thos. M. Coopwood	Truck Driver	8- 9-43 7-20-45	1.05	4 1/2	7.08	1 1/2	3	686.76
Roy Creel	Truck Driver	6- 1-42 8-18-45	.90	4 1/2	6.07	1 1/2	3	1,001.55
Marvin E. Dalton	Truck Driver	6- 4-42 8-18-45	.95	4 1/2	6.41	1 1/2	3	1,051.24
Virgil A. Davis	Truck Driver	9- 2-42 1-24-45	.90	4 1/2	6.07	1 1/2	3	758.75
Arthur Bernard Doss...	Truck Driver	10-15-43 6- 7-45	.95	4 1/2	6.41	1 1/2	3	544.85
Samuel R. Edmonson...	Truck Driver	11-25-42 8-21-45	.90	4 1/2	6.07	1 1/2	3	849.80
Floyd S. Gaulden	Truck Driver	1- 8-43 8-16-45	.90	4 1/2	6.07	1 1/2	3	813.38
Clemmie C. Green.....	Truck Driver	3-29-44 June 1945	.80	4 1/2	5.73	1 1/2	3	355.26
William M. Green	Truck Driver	9- 9-43 7- 7-45	.95	4 1/2	7.08	1 1/2	3	672.60
J. E. Hargis	Truck Driver	2-22-43 8-18-45	.90	4 1/2	6.07	1 1/2	3	770.89
George Harmon	Truck Driver	4-28-44 3-16-45	.85	4 1/2	5.73	1 1/2	3	263.58
Walter Clyde Hill	Truck Driver	8- 1-42 10- 2-42, then in Army until 3-9-43 8-28-45	.80	4 1/2	5.40	1 1/2	3	48.60
Clarence E. House.....	Truck Driver	6- 4-42 8-18-45	.85	4 1/2	5.73	1 1/2	3	939.72
Maurice Howell	Truck Driver	4- 1-42 10-25-45	.95	4 1/2	6.41	1 1/2	3	1,185.15
Ruel Lee Jansen	Truck Driver	9- 1-42 4-29-45	.90	4 1/2	6.07	1 1/2	3	844.33
Odes L. Johnson	Truck Driver	5-11-42 9- 7-45	.95	4 1/2	6.07	1 1/2	3	1,056.18
Jewel Jones	Truck Driver	6-15-42 9-10-45	.90	4 1/2	6.07	1 1/2	3	1,025.83
Castle R. Lane	Driver	12- 3-42 6-15-45	1.00	4 1/2	6.75	1 1/2	3	884.25

1 Name.	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
Cecil R. Lemley	Truck	7- 9-42	1.00	4½	6.75	1½	3	1,120.50
	Driver	9-45						
M. L. Lemley	Truck	11- 1-43	1.00	4½	6.75	1½	3	965.25
	Driver	8-18-45						
Jessie Lee Lewis	Truck	6-22-42	.90	4½	6.07	1½	3	473.46
	Driver	11- 9-43						
Curtis McClure	Truck	1- 8-43	.90	4½	6.07	1½	3	497.74
	Driver	8- 5-44						
Jim McDuff	Truck	9-10-43	.90	4½	6.07	1½	3	595.76
	Driver	8-20-45						
Joseph W. Meers	Truck	9-17-42	.90	4½	6.07	1½	3	977.27
	Driver	10-19-45						
Clarence H. Morgan	Truck	9- 1-42	.90	4½	6.07	1½	3	952.99
	Driver	9/45						
Russell H. McClurg	Truck	6/1944	.90	4½	6.07	1½	3	364.20
	Driver	8-18-45						
James F. Moore	Truck	3-15-43	.85	4½	5.73	1½	3	552.67
	Driver	9-20-45						
Glen W. Moore	Truck	9- 1-42	.95	4½	6.41	1½	3	974.32
	Driver	8-18-45						
Jesse J. Nichols	Truck	5- 1-43	.80	4½	6.07	1½	3	540.23
	Driver	4-21-45						
Garland A. Nottingham	Truck	7- 5-42	.95	4½	6.41	1½	3	1,048.42
	Driver	8-18-45						
P. D. Oliver	Truck	7-29-42	.80	4½	5.40	1½	3	356.40
	Driver	10-21-43						
Edgar B. Owens	Truck	10-28-42	.85	4½	5.73	1½	3	825.12
	Driver	Aug. 1945						
Bryant E. Pettigrew	Truck	11-27-42	.95	4½	6.41	1½	3	900.99
	Driver	8-18-45						
Joseph A. Pierce, Jr.	Truck	11-13-42	1.00	4½	6.75	1½	3	938.25
	Driver	7-21-45						
Herbert A. Power	Truck	7- 3-42	.90	4½	6.07	1½	3	78.91
	Driver	10- 5-42						
Harlan Ewell Sexton	Truck	10-10-42	1.00	4½	6.75	1½	3	121.50
	Driver	Mar. 1943						
Edward B. Smith	Truck	5-26-42	.80	4½	5.40	1½	3	874.80
	Driver	Aug. 1945						
John Tillman Smith	Truck	9- 9-42	.85	4½	5.73	1½	3	865.23
	Driver	8-18-45						

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
John M. Spencer.....	Truck Driver	6- 2-43 8-31-45	.85	4½	5.73	1½	3	658.95
Riley A. Stafford	Truck Driver	11-27-42 8-18-45	.80	4½	5.40	1½	3	750.60
Kenneth A. Scantland..	Truck Driver	9- 9-43 8-17-45	.95	4½	6.41	1½	3	634.59
Jim D. Stewart	Truck Driver	6-17-42 11-11-42 and 2-20-43 6-10-43	.85	4½	5.73	1½	3	212.01
Kenneth A. Stringer....	Truck Driver	6-10-44 8-24-45	.85	4½	5.73	1½	3	349.53
John R. Striplin.....	Truck Driver	8- 7-42 6- 6-45	.90	4½	6.07	1½	3	892.29
John L. Sullivan	Truck Driver	9-21-42 11- 4-45	.85	4½	5.73	1½	3	933.99
Gaston B. Taylor.....	Truck Driver	7- 9-42 9- 2-45	.95	4½	6.41	1½	3	1,064.06
Ed S. Thigpen	Truck Driver	6-12-42 6-16-45	.90	4½	6.07	1½	3	934.73
T. R. Thigpen	Truck Driver	7-13-42 5- 9-45	.90	4½	6.07	1½	3	910.50
Buce E. Tong	Truck Driver	2- 1-42 7- 1-45	.95	4½	6.41	1½	3	999.96
Otis L. Tong	Truck Driver	9-16-42 10-10-45	.90	4½	6.07	1½	3	910.50
Erman L. Tutt	Truck Driver	6-19-42 7-20-45	.80	4½	5.40	1½	3	847.80
James C. Underwood...	Truck Driver	2-28-44 8-18-45	.85	4½	5.73	1½	3	424.02
James O. Wallace	Truck Driver	6-23-42 10-27-45	.95	4½	6.41	1½	3	1,115.34
Virgil J. Water	Truck Driver	June 1942 10-27-45	.90	4½	6.07	1½	3	1,056.18
Louis H. Williams	Truck Driver	6-26-43 8-14-45	.90	4½	6.07	1½	3	661.63
Leonard C. Williamson.	Truck Driver	9- 1-42 10-25-45	.95	4½	6.41	1½	3	1,051.24

1 Name	2 Kind of Work Done	3 Period Employed	4 Hour Pay Rate	5 Overtime Hours Due Per Week	6 Amt. Due Work Week	7 Walking Time Hours	8 Working Time Hours	9 Amt. Total Overtime Due
John H. Wincher.....	Truck Driver	11-15-41 3-15-42 and 7-3-43 to 12- 3-44	.80	4½	5.40	1½	3	399.60
Wm. B. Womack	Truck Driver	11- 9-42 8-18-45	.95	4½	6.41	1½	3	910.22
Lowell F. Wright	Truck	9- 9-42	.90	4½	6.07	1½	3	916.57

Under the classification of the employees listed as Truck Drivers, it is shown that such employees drove trucks upon the reservation operated by the defendant and elsewhere, in the conduct of defendant's business in the manufacture and assembling of shells, ammunition, munitions, bombs, and in the transporting of materials to the defendant's plant for the manufacture and assembling of the items, for which the defendant had a contract with the United States Government. The finished products so manufactured and assembled were shipped in Interstate Commerce.

The employees listed as Laborers performed any and all duties in Department 1400 required of them by the defendant in the operation of its plant and facilities. This character of work included, among other things, loading and unloading trucks, railroad cars, unloading materials, and loading the finished products assembled and manufactured by the defendant. These employees were classified either as Laborers or as Loaders and Unloaders. They performed such duties as were required by the defendant in the operation of its plant as Laborers.

The employees listed as Carpenters and Rough Carpenters performed such duties as ordinarily required of, and were required of, them as a carpenter in and about the premises of the plant operated by the defendant, to include all kinds of repairs on the premises. This class of workmen constructed braces and racks and supports in railroad cars, in warehouses, and elsewhere, for the maintenance and shipment of the items manufactured and assembled by the defendant for Interstate Commerce.

The defendant operated and maintained what is commonly known as a lift-fork truck. The employees listed

under the category of the "Lift Fork" were in the lift fork department and were lift fork operators. They operated the lift fork trucks and maintained the same in the loading and unloading of material coming into and going out of and within the plant.

The employees listed as Checkers checked materials coming into the plant, materials going out of the plant, and materials on hand, in storage, in warehouses, and on the premises operated by the defendant, which said materials were used in the manufacturing, assembling, and processing of the materials shipped in Interstate Commerce as aforesaid.

The employees listed as Shippers performed duties required of them by the defendant in arranging for the spotting, loading, unloading and removal of railroad cars in which the materials manufactured, processed and assembled by the defendant were shipped in Interstate Commerce, and in the checking and handling of freight bills, bills of lading and materials concerning demurrage in said cars.

The employee listed as mechanic was employed in the maintenance of transportation equipment operated by the defendant in the conduct of its business as aforesaid.

The employees listed as Drag Line Operator and Oiler were employed by the defendant in the conduct of its business to operate a dragline and to oil same and the other equipment used in the transportation department of the defendant. The Drag Line Operator and Oiler were employed by the Defendant in the conduct of its business and operated a drag line to maintain and repair the necessary roads and facilities used by the defendant in its warehouse and transportation department.

The employees listed as Grounds and Salvage Yard Foremen were employed by the defendant in maintaining and policing the grounds and premises upon which the plant operated by the defendant was located, and in salvaging and reclaiming materials not finally used in the processing, manufacturing and assembling of the various articles manufactured by the defendant, such as crates and boxes, iron and steel materials left over from the repairs of the mechanical features of the plant.

It is shown that the employees listed were paid on the basis of what is understood to be the time record maintained by the defendant. They were not paid for walking time, nor for the time listed as working time not actually reflected by the time record kept and maintained by the defendant.

It is shown that the defendant maintained gates where the various employees were admitted on to the reservation; that guards were stationed at said gates to check each person entering the reservation as an employee; that the employees listed herein carried a badge upon which was placed a number and usually a photograph of the employee carrying the badge. Guards were required, and did, check each employee hereinabove listed before he was permitted to enter the grounds. After being properly identified, plaintiffs then proceeded from the main entrance gate over a route designated by the defendant to points designated by the defendant, during which time plaintiffs were constantly under the supervision and control of the defendant through its regulations which were enforced by its guards and supervisors. At the end of the shift or daily period of work, plaintiffs again returned from their respective places of work to defendant's outermost gates over routes located upon defendant's premises

and owned, operated, and controlled by defendant, and during such time plaintiffs were under defendant's control and supervision.

The column in the compilation above designated as "Walking hours" sets forth the minimum amount of time reasonably devoted by these plaintiffs in walking from defendant's outermost gates at the beginning of the shift, or daily work period, and returning to said outermost gates at the end of the shift or daily work period, which is not shown upon defendant's clock cards or other pay records and time recording records which it was required to maintain.

The time listed as "Working time hours" set forth in that column in the above compilation means that the employees actually worked the number of hours set forth in the column opposite their names, or were on duty under the control and supervision of the defendant, during that period, all of which time was spent upon the premises controlled by the defendant, for which the respective employees were not paid. They were required to spend the time set forth in that column as employees of the defendant, but the payroll records did not include the period designated. Plaintiffs are informed, and believe, from such information alleged as facts, that the time clock records will disclose the actual working time claimed by each employee, but the payroll records or time sheet records do not disclose the actual time worked and claimed by each employee reflected in this column. Such time is, however, actually overtime claimed by the respective employees for which defendant is liable at the overtime rate of pay.

The figures set forth in the column "Amount total over-time due" represents the amount of money due each employee for the total overtime hours worked during his period of employment.

Respectfully submitted,
 LINCOLN, HARRIS & KENNEDY,
 By C. M. KENNEDY,
 Texarkana, Texas,
 CLARK, COON, HOLT & FISHER,
 1918 Republic Bank Building,
 Dallas, Texas.

This is to certify that a copy of the above and foregoing Bill of Particulars has been mailed to Hon. Steve M. King, United States Attorney at Beaumont, Texas, and Messrs. Wheeler & Atchley, Attorneys at Law, Texarkana, Texas.
 C. M. KENNEDY,
 (C. M. Kennedy),
 One of the Attorneys for the
 Plaintiffs.

Filed Dec. 27, 1946.

PLAINTIFF'S MOTION FOR ORDER TO SEND TO
 APPELLATE COURT ORIGINAL RECORD OF DE-
 FENDANT'S MOTION FOR SUMMARY JUDG-
 MENT.

44

(Title Omitted.)

To the Honorable Judge of Said Court:

Come now the Plaintiffs herein, and respectfully move the Court, pursuant to Rule 75 of the Rules of Civil Procedure, and particularly subsection (i) thereof, to enter

an order for the Clerk of this Court to send to the Appellate Court, in lieu of copies, the original record of Defendant's Motion for Summary Judgment, together with the Exhibits thereto attached, for the following reasons:

The Defendant's Motion for Summary Judgment is supported by affidavits in support of said motion, consisting of substantially 40 pages of typewritten matter, and has attached to it Exhibits "A", "B", "C" and "D". Exhibit "A" consists of substantially 125 pages of detailed information, which in substance is Contract No. W-ORD-516 DA-W-ORD-3, with the supplements thereof, which said contract is an intricate and detailed description, with an index and table of contents, and is so drawn and indexed that if the Court desires to refer to the same, the original will be of material value. In addition thereto, there is attached to said motion as Exhibit "B", "C" and "D", plats and charts, which, if the Appellate Court desires to study the same, will be of little value unless the actual filed copies of said maps and plats are before the Court. These exhibits disclose innumerable facts and figures, which could not be accurately described so as to be of any real value to the Court in passing upon and considering the Defendant's Motion for Summary Judgment, to which are attached the actual exhibits pointed out herein.

Wherefore, it is prayed that this Honorable Court enter its order requiring the original Motion for Summary Judgment, together with the many pages of Exhibits, Plats and Maps, to be sent to the Appellate Court, in lieu of copies, as a part of the record in this case, so that said printed matter, maps and charts, may be inspected by the Court in its original state if the Appellate Court so desires.

CLARK, COON, HOLT & FISHER,
1918 Republic Bank Bldg.,
Dallas (1), Texas.

LINCOLN, HARRIS & KENNEDY,
By C. M. KENNEDY,
Attorneys for Appellants, Roy
Creel et al.

310 P'M Bldg.,
Texarkana, Texas.

TALLEY & OWEN,
Rector Bldg.,
Little Rock, Ark.,
Of Counsel.

Filed Oct. 13, 1947.

ORDER GRANTING MOTION TO SEND TO APPELLATE
COURT ORIGINAL RECORD OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT.

46. (Title Omitted.)

Upon application of the Plaintiffs in this cause, it is ordered that the voluminous document designated as "Defendant's Motion for Summary Judgment", together with the Exhibits attached thereto, consisting substantially of

40 pages of affidavits, and 125 pages of matters pertaining to a contract designated as Exhibit "A", and Exhibits "B", "C" and "D" attached to said motion, consisting of plats and maps, be sent to the Appellate Court, in lieu of copies thereof, as a part of the record in this cause upon appeal, for such inspection and use as the Appellate Court may desire to make of the same.

(S.) JAMES C. WILSON,

United States District Judge.

Approved:

(S.) OTTO ATCHLEY,
Atty. for Defendant.

(S) C. M. KENNEDY,
Atty. for Plaintiff.-

Filed Oct. 29, 1947.

DEFENDANT'S MOTION FOR LEAVE TO FILE ADDITIONAL AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT.

47

(Title Omitted.)

To Said Honorable Court:

The defendant respectfully moves the Court for leave to file the attached Affidavit in Support of Defendant's Motion for Summary Judgment, and as grounds therefor, states:

I.

The facts set forth in said attached affidavit are facts in addition to those set forth in the affidavit attached to the Motion for Summary Judgment on file in this cause.

and such facts are material in connection with the grounds for said Motion for Summary Judgment, as set forth in Subdivisions (a) and (b) of Paragraph I thereof.

Respectfully submitted,

OTTO ATCHLEY,

(Otto Atchley),

WHEELER, ATCHLEY & NEW-
BERRY,

Attorneys for Defendant.

700 Texarkana National Bank Building,
Texarkana, Texas.

Dated: Apr. 21, 1947.

The above and foregoing motion was served upon the plaintiffs by mailing a true and correct copy thereof to Messrs. Lincoln, Harris & Kennedy, Attorneys of Record for Plaintiffs, at their address in Texarkana, Texas, on the day and date last above written.

OTTO ATCHLEY,

(Otto Atchley),

One of Defendant's Attorneys.

Filed Apr. 21, 1947.

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT.

48

(Title Omitted.)

1.

The defendant at no time had title to the finished products of the plant, and at no time had title to any of the

component parts of such products, or of the materials, supplies, machinery, equipment, or other property used in connection with the contract, title thereto and possession thereof being at all times in the United States and subject to its sole control.

2.

The Government did not purchase munitions from the defendant.

3.

The defendant did not sell munitions to the Government, or to any other party.

4.

No munitions or other products were manufactured or processed at the Lone Star Ordnance Plant except from materials belonging to the Government, and all such munitions and other products were by the Government used in the prosecution of the war.

5.

The United States furnished and shipped to Lone Star Defense Corporation approximately 90-95 per cent of all materials, supplies, machinery, equipment, and other property used in connection with the Contract for operation of the Lone Star Ordnance Plant. The remainder (approximately 5 per cent) of the materials, supplies, machinery and equipment were purchased by the defendant. The bulk of all such purchases (approximately 95 per cent of the purchased material) was approved by the Government prior to the issuance of a purchase order by

the defendant. Title to such purchased materials vested in the United States at their points of origin, and such materials were shipped to Lone Star Ordnance Plant on Government bills of lading marked "Government property for military use". The remainder of the materials purchased by the defendant, which were not shipped on a Government bill of lading, consisted of less than car lot shipments, and purchases in an amount less than Five Hundred (\$500.00) Dollars; title to such purchases also vested in the United States.

6.

A Government Finance Officer in Washington, D. C., paid the freight on the Government bills of lading.

7.

The United States had title to and possession of all materials, supplies, machinery, equipment, and other property used in connection with the Contract for operation of Lone Star Ordnance Plant at all times relevant hereto.

8.

The United States maintained an Accountable Property Officer to be accountable for all property used in connection with the Contract between the Government and the defendant.

9.

Prior to the time the plant actually began operating, the United States advanced to the defendant a large sum of money to defray anticipated operating expenses. As money was withdrawn from this fund, it was replenished

by the Government. The defendant was not required to use any of its own money in the operation of Lone Star Ordnance Plant.

10.

The Government contracted for electric power, gas, telephone, telegraph, and teletype service at the plant, and paid such bills directly. The defendant acted as an agent of the Government for the purpose of causing official business messages to be transmitted.

11.

The plant was under the control and supervision of the Chief of Ordnance, United States Army. A Commanding Officer appointed by the Chief of Ordnance was on duty at the Lone Star Ordnance Plant at all times relevant hereto, and had complete control over the property and the installations thereon.

12.

By deed, Honorable Coke Stevenson, as Governor of the State of Texas, ceded jurisdiction over the Lone Star reservation to United States Government for all purposes except the service of civil process upon the defendant for causes of action growing out of the execution of its Contract, and the United States had exclusive jurisdiction over the premises embracing the Lone Star Ordnance Plant.

13.

The Government retained the right to dismiss any employee at the plant which the Contracting Officer should

deem incompetent or whose retention was by him deemed not to be in the public interest.

14.

The Government approved all wage and salary rates. The Government also required that no key employees and their principal assistants be hired or assigned to service until there had been submitted and approved by the Contracting Officer a statement of the previous salary, proposed salary, qualifications and experience of the persons selected for such assignments.

15.

All munitions processed at the plant were processed under the direct supervisions and control of the Government.

16.

The Government specified the loading processes to be used. It directed the type and quantity of munitions, the specifications thereof, and the rate of production. Inspections were made by the Government during the various steps of their processing. Detailed rules and regulations governing safety and methods of production were promulgated by the Government. Defendant was required to comply with such rules and regulations and to meet specifications, and Government officers and employees were present to report on compliance.

17.

The Government, from time to time, sent to the defendant production schedules directing the defendant to pro-

duce munitions of certain designated specifications. The defendant was required to meet these schedules. It had no discretion as to the type of munitions to be made, the quantity thereof, or the method or process used in their manufacture, and the defendant produced no munitions except as required by Government directive.

18.

On occasion the Government transferred production schedules from other ordnance plants to the Lone Star Ordnance Plant for completion. In such cases, if the original plant had made any contracts for materials and supplies on account of such schedules, the defendant was required to take over such supply contracts and to pay the vendors in accordance therewith from funds supplied to the defendant by the Government.

19.

The defendant was not penalized if the materials processed at the plant did not meet specifications and could not be used. Under the Contract between the defendant and the Government, the defendant was allowed all costs of reworking rejected munitions and all costs of material finally rejected.

20.

Of the direct materials used in the manufacture of munitions, the Government furnished materials of the approximate value of \$503,393,000.00, and the defendant purchased and paid for with Government money materials of the approximate value of \$32,514,139.66.

The Government employees audited the time cards and payrolls, and during a part of the time, witnessed the actual payments to the employees, and during the remainder of the time, witnessed actual payments to a sufficient number of the employees to satisfy the Government that their actual payments were being made, as indicated by the defendant's payroll records.

The defendant paid wages and salaries of employees by check against a bank account, the funds of which were furnished by the Government, and were subject to withdrawal by the Government.

No sales tax was paid by the defendant on materials purchased for use at the Lone Star Ordnance Plant, no property taxes on real or personal property at Lone Star Ordnance Plant were paid to the State or the County, and no license or registration fees were paid on motor vehicles used in connection with the operation of the plant.

The State of Alabama,
County of Tuscaloosa.

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared J. C. Herbert, who being first duly sworn, states on oath that during all the times herein mentioned, he was employed by Lone Star Defense Corporation in the capacities of Assistant Secretary, Assistant General Manager and General Manager; that he has personal knowledge of the facts stated in Paragraphs 4, 7, 11, 13, 14, 15, 16, 17, 18,

19, 22, and 23, of the above and foregoing "Supplemental Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs are true and correct, and that he is able to give competent testimony as to the truth thereof.

J. C. HERBERT.

Subscribed and sworn to before me by J. C. Herbert this the 11th day of April, A. D. 1947, to certify which witness my hand and seal of office.

DOROTHY S. McGEE,

(Seal)

Notary Public in and for Tuscaloosa County, Alabama.

My commission expires November 21, 1950.

Bonded by The Employers Liability Assurance Corporation.

The State of Ohio,
County of Summit.

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared K. M. Prichard, who being first duly sworn, states on oath that he was employed by Lone Star Defense Corporation in the capacity of Assistant Secretary of the corporation on the 3rd day of June, 1943, and still holds said office; that he has personal knowledge of the facts stated in Paragraph 1, 2, 3, 11, 12, 13, 22, and 23, of the above and foregoing "Supplemental Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs are true and correct, and that he is able to give competent testimony as to the truth thereof.

K. M. PRICHARD.

Subscribed and Sworn to before me by K. B. Prichard
this the 11th day of April, A. D. 1947, to certify which wit-
ness my hand and seal of office.

ALBERTA M. TEWERS,

(Alberta M. Tewers),

(Seal)

Notary Public in and for
Summit County, Ohio.

My Commission expires November 15, 1947.

The State of Ohio,
County of Summit.

Before me, the undersigned, a Notary Public in and for
the County and State aforesaid, on this day personally
appeared K. R. Huffman, who being first duly sworn,
states on oath that he was employed by Lone Star De-
fense Corporation in the capacity of Controller and Assist-
ant Treasurer on the 22nd day of July, 1941, and still holds
said offices; that he has personal knowledge of the facts
stated in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 18,
19, 20, 21, 22, and 23, of the above and foregoing "Supple-
mental Affidavit in Support of Motion for Summary Judg-
ment"; that the facts stated in said paragraphs are true
and correct, and that he is able to give competent testi-
mony as to the truth thereof.

K. R. HUFFMAN.

Subscribed and Sworn to before me by K. R. Huffman
this the day of Apr. 11, 1947, A. D. 1947, to certify
which witness my hand and seal of office.

R. MacGREGOR,

(Rosemary MacGregor),

(Seal)

Notary Public in and for
Summit County, Ohio.

My commission expires August 1, 1948.

Filed April 29, 1947.

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT.

56

Filed June 16, 1947.

(Title Omitted.)

To Said Honorable Court:

Come the plaintiffs and in response to defendant's motion for summary judgment state:

I.

Plaintiffs allege that there are genuine controverted issues to material facts in this cause and that such material facts are shown in plaintiffs' complaint which are directly controverted by the general denial filed by the defendant in its answer.

II.

Plaintiffs state that the defendant is engaged in the production of goods for commerce and in acts necessary for the production of goods for commerce at all times pertinent to the complainant filed herein within the meaning of the Fair Labor Standards Act.

III.

Plaintiffs specifically deny that the defendant has paid them the moneys which it owes them under the Fair Labor Standards Act and in that connection states that pursuant to the provisions of the Fair Labor Standards Act and other Acts of Congress said plaintiffs are entitled to be remunerated at the rate of time and one-half their

regular rate of pay for all over-time in which they were engaged as alleged in their complaint.

IV.

Plaintiffs allege that they and each of them were employed under a written contract with the defendant at a specific hourly rate of pay, for a specific purpose and under specific conditions of employment.

V.

Plaintiffs further allege that in view of the controverted issues and the magnitude of necessary proof for their determination neither affidavits nor a reasonable amount of oral testimony could be adduced upon a hearing of the motion for summary judgment for the determination of such issues. The plaintiffs represent to this Honorable Court that affidavits of the many respective party plaintiffs would unnecessarily encumber the record with the many issues of dispute and render virtually impossible a final determination of such issues upon this motion. However, in that connection, the plaintiffs would respectfully show in response to the lengthy affidavit which the plaintiffs are not in present position to admit or deny in full, but which the plaintiffs do categorically deny as follows:

A. Plaintiffs do state that they were employed upon a written memorandum in writing under which the defendant obligated itself to employ and pay the plaintiffs and each of them at a certain hourly rate, under conditions and for a specific labor or service.

B. Plaintiffs specifically state that the defendant did not pay plaintiffs the full amount of pay due them; did not pay plaintiffs in accord with its contract with the Gov-

ernment of the United States; and did not correctly compute the amounts due and owing plaintiffs for said labor and services.

C. Plaintiffs here state that defendant required, directed, demanded and practiced identical methods and usages common to ordnance plants similarly engaged throughout the United States in the employment of similar employees so engaged and wholly failed and refused to compensate the plaintiffs as required so to do for their productive activity and time such plaintiffs were so engaged, as other ordnance plants did.

D. That the defendant throughout all times pertinent to this cause operated as an independent contractor upon a cost plus a fixed fee basis and by its contract with the Government of the United States specifically obligated itself to pay plaintiffs the moneys they seek under this Act.

E. That plaintiffs do not seek under this complaint recovery for so-called travel time and dressing time or any time in which they were not engaged in productive activity as that term is commonly and ordinarily defined.

F. That defendant did recognize and operate under the provisions of the Fair Labor Standards Act in so far as certain classes of employees at its ordnance plant were concerned.

G. That the failure to pay plaintiffs the amounts which they were entitled to is the result of neglect and an arbitrary decision by the defendant through its duly authorized agents which the defendant now seeks to justify after the conclusion of the war and the conclusion of its contract; that the defendant cannot justify and equitably explain its failure and refusal to comply with the Fair Labor

Standards Act in connection with the classes of employees such as the plaintiffs herein while at the same time justifying and indorsing its acts in connection with those classifications already paid their full amounts.

The above allegations "A" through "G" are intended to acquaint this Honorable Court with the true issues involved in this cause without regard to the lengthy affidavit attached to defendant's motion for summary judgment and to indicate that such issues involved in this cause can only be determined by full hearing upon the merits. In that connection plaintiffs represent to this Honorable Court that the matters raised by the affidavits attached to defendant's said motion are not appropriate in this motion for summary judgment as such matters raised in the affidavits can only be determined by a full hearing and plaintiffs allege that the only matter for determination before the Court is the question of interstate commerce presented in defendant's said motion.

Plaintiffs state that the defendant is and has been at all times incident hereto engaged in interstate commerce as that term is broadly defined under the Fair Labor Standards Act and as the Appellate Courts of this land have often held in connection with the administration of the Act.

VI.

Plaintiffs would further state that they will be pleased to enter into stipulation with counsel for the defendant or to state fully and fairly all of the real issues involved in these cases to the Court at the pre-trial conference and that such pre-trial conference should be had at an early date in order that the position of these plaintiffs with respect to these claims be made fully known to the Court.

VII.

Wherefore plaintiffs respectfully request that defendant's motion for summary judgment be in all things denied.

PAT COON,
W. J. HOLT,

Republic Bank Building,
Dallas, Texas.

LINCOLN, HARRIS & KENNEDY,
By C. M. KENNEDY,
(C. M. Kennedy),
Attorneys for Plaintiffs.

312 P. & M. Building,
Texarkana, Texas.

Dated: June 12, 1947.

The above and foregoing responses to the motion for summary judgment was served upon the defendant in the above styled and numbered cause by mailing a true and correct copy thereof to Messrs. Wheeler, Atchley and Newberry, Attorneys of Record for said defendant, at their address in Texarkana, Texas, on the day and date last above shown.

C. M. KENNEDY,
(C. M. Kennedy),
C. M. KENNEDY,
One of Plaintiffs' Attorney.

LETTER OF JUDGE BRYANT, DATED SEPT 23, 1947.

60

United States District Court,
Eastern District of Texas.

Sherman, Texas, September 23, 1947.

Atchley and Vance,
Attorneys at Law,
Beck Building,
Texarkana, Texas.

Clark, Coon, Holt & Fisher,
Attorneys at Law,
Republic Bank Bldg.,
Dallas 1, Texas.

Talley & Owen,
Attorneys at Law,
Rector Bldg.,
Little Rock, Arkansas.

Lincoln, Kennedy & Glover,
Attorneys at Law,
Texarkana, Texas.

Re: Civ. 188, 190, 203, 173, 191, 192, 186, 175, 189 and 187,
Texarkana Division Lone Star Wage-Hour Cases.

Gentlemen:

After much consideration of the motions for summary judgment filed in the above matters, I am of the opinion that the same should be and they are hereby granted, and for the controlling reason that I do not believe that the defendant was engaged in the production of goods for commerce within the meaning of the Fair Labor Standards Act.

In other words, I agree with the conclusions reached by Judge Lemly to the effect that:

Section 3(i) of the act, 29 U. S. C. A. Sec. 203(i), provides that the term 'goods' as used in the phrase 'production of goods for commerce', does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof. The * * * Ordnance Plant is, in its entirety the property of the United States. Practically all of the materials that went into the munitions were furnished by the Government and were shipped to the plant as the property of the United States, for military use. This included powder, metal and other materials that formed a part of the munitions. This was known as free issue material. The remaining materials, which were used in the main in the fabrication, packing and shipment of the munitions, were purchased by the defendant from outside sources, and all these materials became the property of the Government at the point of purchase, * * * as the plaintiff was at all times working on goods of the Government, with machines the possession of which remained in the United States at all times. After these goods were worked on by the plaintiff, the United States shipped the same under Government bill of lading to military facilities outside of the state. If it can be said that the goods were in the constructive rather than actual possession of the Government while they were being processed, they were certainly in the actual physical possession of the Government when they were shipped. The goods in question were munitions of war and were manufactured for the purpose of being consumed by the United States in the prosecution of the war. Hence the United States in our opinion was the ultimate consumer thereof within the meaning of the Act, and the plaintiff was not engaged in the 'production of goods for commerce.'"

Further I am of the opinion that under the facts discussed here this Act was never intended to apply to or in-

clude the United States and that in performing the functions which it did in this matter, the United States was not only not engaged in commerce or the production of goods for commerce within the meaning of the Act, but was simply performing an administrative act of the government.

As it is my understanding that the parties have agreed that an order will only be entered in one of the pending cases for the purposes of appeal, and that the other cases will abide the result of such appeal, proper stipulation will be filed by the attorneys to this effect, and attorneys for defendant may prepare proper order within ten days time.

Yours very truly,

(S.) RANDOLPH BRYANT.

Filed Oct. 17, 1947.

62

SUMMARY JUDGMENT.

(Entered as of Oct. 1, 1947.)

Roy Creel, et al.,

vs.

Civil No. 191.

Lone Star Defense Corporation.

This cause came on to be heard upon motion of the defendant for summary judgment pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the Court, having considered the pleadings in the action, defendant's said motion for summary judgment, and the affidavits of John T. Murchison, William A. Bailey, A. Kelly, J. S. Hebert, K. M. Pritchard, K. E. Huffman, A. C. Sprague, R. W. Ells and C. E. Jones accompanying and in support of said

motion for summary judgment, and there being no controverting or opposing affidavit, or other evidence in opposition to defendant's motion for summary judgment, and, said accompanying affidavit; and the Court having found that there is no genuine or material issue or controversial question of fact to be submitted to the Court on the trial of this cause, the Court is of the opinion and finds that defendant is entitled to judgment on its said motion as a matter of law, to the effect that plaintiffs take nothing by this suit:

It is, therefore, Ordered, Adjudged and Decreed by the Court that the defendant's motion for summary judgment as to the whole case be, and the same is hereby sustained; and accordingly, it is further Ordered, Adjudged and Decreed by the Court that plaintiffs take nothing by this suit, and that this cause be, and the same is hereby dismissed at plaintiffs' cost for which execution may issue.

(S.) RANDOLPH BRYANT,

Judge Presiding.

Filed Oct. 1, 1947.

63

NOTICE OF APPEAL.

Roy Creel, et al.,

vs.

Civil No. 191.

Lone Star Defense Corporation.

To the Defendant, Lone Star Defense Corporation:

Notice is hereby given that Roy Creel, individually and as the duly appointed agent of all other Plaintiffs named in the Amended Complaint filed herein, for himself and as such agent of said employees similarly situated, Plain-

tiffs in the above captioned cause, hereby appeal to the Circuit Court of Appeals for the Fifth Circuit, from the order sustaining the Defendant's Motion for Summary Judgment entered in this action on October 1, 1947.

CLARK, COON, HOLT & FISHER,
1918 Republic Bank Building,
Dallas 1, Texas.

LINCOLN, HARRIS & KENNEDY,
By C. M. KENNEDY,
(C. M. Kennedy),
Attorneys for Appellants, Roy
Creel, et al.

310 P. & M. Building,
Texarkana, Texas.

TALLEY & OWEN,
Rector Building,
Little Rock, Arkansas,
Of Counsel.

The original Notice of Appeal is this day mailed to the United States District Court, U. S. Court House, Sherman, Texas, and a copy has been mailed to Otto Atchley, Esq., c/o Atchley & Vance, Texarkana, Texas, and a copy has been mailed to Wheeler, Newberry & Wheeler, Attys., Texarkana National Bank Bldg., Texarkana, Texas, this 10th day of October, 1947.

C. M. KENNEDY,
(C. M. Kennedy),
One of the Attorneys for Appel-
lants, Roy Creel, et al.

Filed Oct. 13, 1947.

BOND.

(Title Omitted.)

Know All Men By These Presents: That I, Roy Creel, as Principal, and The Aetna Casualty and Surety Company as Surety, are held and firmly bound unto Lone Star Defense Corporation, a corporation, in the sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, to be paid to the said Lone Star Defense Corporation, its attorneys, successors, or assigns, to which payment we bind ourselves, our successors and assigns, jointly and severally.

Sealed with our seals and dated this 10th day of October, A. D. 1947.

Whereas, on October 1, 1947, in an action in the District Court of the United States, for the Eastern District of Texas, Texarkana Division, between Roy Creel, et al., Plaintiffs, and Lone Star Defense Corporation, Defendant, a judgment was rendered against the said Roy Creel, et al., and the said Roy Creel has duly filed a notice of appeal from said judgment.

Now, the condition of this obligation is that if the said Roy Creel shall prosecute his appeal with effect and pay all costs, if the appeal is dismissed or the judgment is affirmed, or such costs as the Appellate Court may award if the judgment is modified, then this obligation to be void, otherwise to remain in full force and effect.

ROY CREEL,

By (S.) C. M. KENNEDY,

(C. M. Kennedy),

Agent & Attorney, Principal.

THE AETNA CASUALTY AND

(Seal)

SURETY COMPANY,

By (S.) W. N. PITTS,

Attorney in Fact, Surety.

Filed Oct. 13, 1947.

65

STATEMENT OF POINTS.

(Title Omitted.)

Now comes Roy Creel, plaintiff in the above numbered and entitled cause, and files this concise statement of the points on which he intends to rely on the appeal of this cause, as follows:

1.

The Trial Court erred in sustaining the defendant's Motion for Summary Judgment, and, in effect, holding:

a. That the goods produced by defendant during the time, at the place, and in the manner now shown by the record did not constitute "goods" as that term is defined

by the Fair Labor Standards Act of 1938, as amended; and,

b. That the delivery of such goods after production, assembling and compounding by defendant to the agent of the United States Government at the plant site, and the subsequent consignment and shipment thereof by him to various military installations and persons outside of the State of Texas, did not constitute engaging in "commerce" as that term is defined by the Fair Labor Standards Act of 1938, as amended.

CLARK, COON, HOLT & FISHER,
Republic Bank Building,
Dallas 1, Texas.

LINCOLN, HARRIS & KENNEDY,
312 P. & M. Building,
Texarkana, Texas.

By C. M. KENNEDY,
Attorneys for Plaintiff.

TALLEY & OWEN,
Rector Building,
Little Rock, Arkansas,
Of Counsel.

Receipt of the foregoing is acknowledged this the 28th day of October, 1947, and any further notice is waived.

WHEELER, NEWBERRY AND
WHEELER,
Texarkana National Bank Building,
Texarkana, Texas.

ATCHLEY AND VANCE
Beck Building,
Texarkana, Texas.

By (S.) OTTO ATCHLEY,
(Otto Atchley),
Attorneys or Defendant.

Filed Nov. 1, 1947.

DESIGNATION OF RECORD.

(Title Omitted.)

To the Clerk of the District Court of the United States,
Eastern District of Texas, Texarkana Division:

Appellant designates the following portions of the record, proceedings, and evidence to be contained in the record on appeal in this action:

1. Order of the Court granting Defendant's Petition for removal of this cause to the District Court of the United States, Eastern District of Texas, Texarkana Division, filed on or about November 26, 1945;
2. Plaintiffs' Amended Complaint filed on or about February 6, 1946;
3. Plaintiffs' Amendment to Amended Complaint filed the day of February, 1946;
- 3A. Plaintiffs' Bill of Particulars;
4. Defendant's Original Answer filed on or about January 8, 1947;
5. Defendant's Amended Original Answer filed May 23, 1947;
6. Defendant's Motion for Summary Judgment, with Affidavits and Exhibits, filed on or about January 10, 1947 (not to be printed in record, accordance with order of the Court granting Plaintiffs' Motion to send to the Appellate Court the original record of Defendant's Motion for Summary Judgment, together with exhibits);

7. Defendant's Supplemental Affidavit to Motion for Summary Judgment;
8. Plaintiffs' Response to Defendant's Motion for Summary Judgment, filed on or about June 12, 1947;
9. Letter from Judge Randolph Bryant to Atchley and Vance, and other attorneys, dated September 23, 1947, filed October 17, 1947;
10. Order of the Court dated October 1, 1947, granting Defendant's Motion for Summary Judgment;
11. Plaintiffs' Notice of Appeal filed October 13, 1947;
12. Plaintiffs' Motion for Order to send to Appellate Court original record of Defendant's Motion for Summary Judgment, together with exhibits, in lieu of copies;
13. Order of the Court granting such Motion;
14. Appeal Bond;
15. Statement of Points upon which Appellant intends to rely;
16. This Designation;

17. Clerk's Certificate.

CLARK, COON, HOLT & FISHER,

Republic Bank Building,
Dallas, Texas.

LINCOLN KENNEDY & GLOVER,

312 P. & M. Building,
Texarkana, Texas.

By C. M. KENNEDY,
(C. M. Kennedy),
Attorneys for Plaintiff.

TALLEY & OWEN,

Rector Building,
Little Rock, Arkansas,
Of Counsel.

A true copy of the above and foregoing Designation of Record was served upon the Defendant by mailing to Atchley and Vance, as attorneys of record for such Defendant, a true copy thereof, which service was had by depositing the same in an envelope with sufficient postage affixed, duly addressed to the said Atchley and Vance, Beck Building, Texarkana, Texas, and depositing the same in the United States mail at Texarkana, Texas, on this the 30 day of October, A. D. 1947.

C. M. KENNEDY,
(C. M. Kennedy),
One of Plaintiffs' Attorneys.

Texarkana, Texas.

Filed Nov. 1, 1947.

APPELLEE'S DESIGNATION OF ADDITIONAL CON-
TENTS OF RECORD.

69

(Title Omitted.)

To the Clerk of the District Court of the United States,
Eastern District of Texas, Texarkana Division:

Appellee, Lone Star Defense Corporation, designates the following additional portion of the record, proceedings, and evidence to be contained in the record on appeal in this action:

1. Order directing plaintiffs to file Bill of Particulars (dated September 16, 1946).

2. That portion (indicated below) of Reporter's Transcript of Pre-trial conference (Stenographically Reported) held at Sherman, Texas, May 3, 1946 (filed May 13, 1946), as follows:

a. Line 11, of page 7, to and including line 4, page 8.

b. Line 21, page 34, to and including line 2, page 35.

c. Line 10 to period in line 20, page 36.

3. That portion (indicated below) of Reporter's Transcript of hearing on Defendant's Motion for Summary Judgment (Stenographically Reported) held at Sherman, June 16, 1947. (Filed August 19, 1947), as follows:

a. Beginning at the period on line 24, page 63, and continuing to period in line 13, page 64.

b. Line 3 to and including line 12, page 80.

c. Line 16 to and including line 22, page 82.

d. Line 22, page 83, to and including line 13, page 84.

4. Appellee's Designation (this instrument) of Additional Portions of Record.

WHEELER, ATCHLEY & NEW-
BERRY,

Texarkana National Bank Building,
Texarkana, Texas.

OTTO ATCHLEY,

Beck Building,
Texarkana, Texas.

By OTTO ATCHLEY,
(Otto Atchley),

Attorneys for Appellee.

A true copy of the above and foregoing Designation of Additional Contents of Record was served upon the appellants by mailing to Lincoln, Kennedy & Glover, as attorneys of record for such appellants, a true copy thereof, which service was had by depositing the same in an envelope, with sufficient postage affixed, duly addressed to the said Lincoln, Kennedy & Glover, 312 P. & M. Building, Texarkana, Texas, and depositing the same in the United States Mail at Texarkana, Texas, on this the 6th day of November, A. D. 1947.

OTTO ATCHLEY,
(Otto Atchley),

One of the Attorneys for
Appellee.

Filed Nov. 6, 1947.

(Line 11 page 7 to Line 4 page 8, Tr. of Hearing Sherman May 3, 1946):

Mr. Kennedy:

We don't seem to get any agreement, Your Honor please, on the order here, but in the original petition we asked for certain information as to the hours worked, the number of days each week, the number of weeks each month and each year, and the wage rates of these employees were asked in our original petition. We asked that the defendant be required to furnish that into open Court, and, then, they filed this motion for bill of particulars, setting up that we have plead the very things that we were asking for in our original petition, and we come along with our motion for production of records and we understand that they have made a compilation of the very thing that we want, the very things that is material to a decision in this case, as to the number of hours each week each employee worked, the number of days each week that he worked, and the wage rate that he worked at and the change in the wage rate, and the length of time from the beginning of his employment to the end of his employment, which we say would show if there is any over-time compensation due him, and they, of course, are denying that on various grounds.

* * * * *

(Line 21 page 34 to Line 2 page 35 Hearing of May 3, 1946):

Mr. Kennedy:

There are some eight hundred employees in this suit, about twelve hundred in Mr. Owen's suit, and our particular claims are based on this: That each one of these employees clocked in at 7:45 in the morning and he clocked out at 4:30 in the afternoon; eight and one-half

hours clock time and the Lone Star Defense Corporation paid them for only eight hours.

(Line 10 to Line 20, page 36, Hearing May 3, 1946):

The Court:

Let me ask you a question. Is your whole claim predicated on this clock time or that is, that portal to portal time?

Mr. Kennedy:

Our particular claims are, if Your Honor please. It is not true as to Mr. Owen. He has some. But ours are based on the fact that these employees clocked in and were required, mind you—

The Court:

I understand.

Mr. Kennedy:

— to stay on the ground for eight and a half hours, and they paid them for eight hours. That is our law suit exactly.

(Line 24 (beginning at period page 63) to period in line 13, page 64, June 16, 1947, Hearing):

Mr. Coon:

Now, if Your Honor please, our suit today is just the same suit it was when it was filed in September, 1945. By that I mean the sole question before Your Honor today in these law suits is did these employees while engaged in production work do overtime? If they

did they are entitled to compensation. There is no other fact question. Everything that is set out in the lengthy affidavit as made by the party defendant except a denial wherein they say these parties received their money is not material. There is only one issue. Did these employees engage in productive work overtime? And that is the sole question in the law suits before Your Honor. (Filed May 13, 1946.)

* * * * *

(Lines 3-12, Page 80, June 16, 1947, Hearing):

Mr. Coon:

I think we can make an explanation. At the time the bills of particulars were filed the portal suits appeared to be good, and we set off in a separate item travel time. We put it down separate. We waive and make no contention for it, and in all the negotiations and discussions we have never made a contention for travel time, dressing and waiting time. Our contention is solely on the productive time. That is the only contention we make.

* * * * *

(Lines 12-22, Page 82, June 16, 1947 Hearing):

The Court:

Take this down now. As I understand your statement. Speaking for all these plaintiffs in these suits that you are making no claim about walking time or dressing time or sleeping time or any other time except the individual man where engaged in actual productive work.

Mr. Coon:

That is correct, sir.

* * * * *

(Line 22, Page 83 to Line 13 Page 84, Hearing June 16, 1947):

Mr. Coon:

May I say one word? There is a limitation on productive work. I mean performance of duties. I don't mean he was necessarily making something. I mean he was engaged and in the performance of his duties as required by productive work.

The Court:

I understand that.

Mr. Atchley:

If the Court please, of course, I don't know. I don't know exactly. I am not clear on the plaintiff's position about that.

The Court:

What he means is the time that he was actually engaged on the job. That is what you mean, isn't it, Mr. Coon?

The Court:

Eliminating these frequent periods of walking time, dressing time and sleeping time and all that.

Mr. Coon:

Yes, sir. (Filed Aug. 19, 1947.)

CLERK'S CERTIFICATE.

In the District Court of the United States for the Eastern
District of Texas, Texarkana Division.

I, RUTH B. HEAD, Clerk of the United States District
Court for the Eastern District of Texas, do hereby certify
that the above and foregoing is a true, full, correct and
complete transcript of the record in Civil Action No. 191,
Texarkana Division, entitled Roy Creel, et al., vs. Lone
Star Defense Corporation, as fully as is called for in the
designations of record and as remains on file and of record
in my office at Texarkana, Texas.

Witness my hand officially and the seal of said Court at
Texarkana, Texas, this the 19th day of November, A. D.
1947.

RUTH B. HEAD, Clerk,
By LOIS M. GRIFFIN,
(Lois M. Griffin),
Deputy.

(Seal)

SUPPLEMENTAL TRANSCRIPT OF RECORD.

**IN THE
UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT.**

—
No. 12,182.
—

ROY CREEL, ET AL.,

Appellants,

versus

LONE STAR DEFENSE CORPORATION.

Appellee.

**Appeal from the District Court of the United States for
the Eastern District of Texas.**

CAPTION.

BE IT REMEMBERED, that at special session of Court begun and held at Sherman, Texas, on the 3rd day of May, 1946 and the 16th day of June, 1947, in and by the United States District Court for the Eastern District of Texas, the Honorable Randolph Bryant, United States District Judge, presiding, the following proceedings were had, to-wit:

ROY CREEL, ET AL.,

versus

LONE STAR DEFENSE CORPORATION.

Civil Cause No. 191.

In the Texarkana Division.

MOTION FOR EXTENSION OF TIME.

In the District Court of the United States for the Eastern District of Texas, Texarkana Division.

Roy Creel, et al.,

vs. Civil Action No. 191.

Lone Star Defense Corporation.

To the Honorable Randolph Bryant, Judge of said Court:

Roy Creel moves the Court to extend until December 22, 1947, the time within which the record on appeal in this cause may be filed, in the Circuit Court of Appeals, on the ground that by reason of the designation of the

record filed by the appellee it was necessary for the appellant to file an additional designation of that part of the record of the hearings had in Sherman, Texas, on May 3, 1946, and June 16, 1947, which were omitted by the appellee in its designation of the record. No previous extensions of such time have been obtained from the adverse party or granted by this Court.

CLARK, COON, HOLT & FISHER,
 Republic Bank Building,
 Dallas, Texas.

LINCOLN, KENNEDY & GLOVER,
 By C. M. KENNEDY,
 (C. M. Kennedy).
 Attorneys for Appellant.

312 P. & M. Building,
 Texarkana, Texas.

TALLEY & OWEN,
 Rector Building,
 Little Rock, Arkansas,
 Of Counsel.

A true copy of the above and foregoing Motion for Extension of Time was served upon the defendant by mailing to Otto Atchley, one of the attorneys for defendant, a true copy thereof, which service was had by depositing the name in an envelope, with sufficient postage affixed, duly addressed to said Otto Atchley, Beck Building, Texarkana, Texas, on this the 18th day of November, A. D. 1947.

C. M. KENNEDY,
 (C. M. Kennedy),
 One of the Attorney for
 Appellant.

Filed Nov. 19, 1947.

ORDER EXTENDING TIME FOR FILING OF TRANSCRIPT OF RECORD.

(Title Omitted.)

On this, the 20 day of November, A. D. 1947, came on to be heard plaintiffs' motion to extend the time for filing the record in the Circuit Court of Appeals, and the Court after hearing such motion, and duly considering the same, and being of the opinion that it is well taken, It Is Ordered, Adjudged and Decreed that the time allowed the plaintiff to file Transcript of the Record in the Circuit Court of Appeals be and the same is hereby extended until December 22, 1947, which is less than ninety days from the date of the filing of notice of appeal in this cause.

(S.) JAMES C. WILSON,
(Judge Presiding).

Filed Nov. 21, 1947.

TRANSCRIPT OF HEARING AT SHERMAN, TEXAS. MAY 3, 1946.

In the District Court of the United States for the Eastern
District of Texas, Texarkana Division.

T. J. Caulder, et al.,
vs. Civil No. 173.
Lone Star Defense Corp.

James E. Long, et al.,
vs. Civil No. 175.
Lone Star Defense Corp.

Noble W. Black, et al.,
vs. Civil No. 203.
Lone Star Defense Corp.

Appearances:

Talley, Owen and Talley, of Little Rock, Ark., by Mr.
Wayne Owen;
Messrs. W. J. Holt and Pat Coons, of Dallas, Texas,
For Plaintiffs.

Wheeler and Atchley, of Texarkana, Texas, by Mr. Otto
Atchley,
For Defendant.

L. L. Mills, et al.,
vs. Civil No. 178.
Lone Star Defense Corp.

Appearances:

Talley, Owen and Talley, of Little Rock, Ark., by Mr.
Wayne Owen,
For Plaintiff.

Wheeler and Atchley, of Texarkana, Texas, by Mr. Otto
Atchley,
For Defendant.

Charlie H. Little,
vs. No. 186.
Lone Star Defense Corp.

W. H. Wrenchey,
vs. Civil No. 187.
Lone Star Defense Corp.

Morris U. Allen,
vs. Civil No. 188.
Lone Star Defense Corp.

James G. Spears, et al.,
vs. Civil No. 189.
Lone Star Defense Corp.

Jal A. Birts, et al.,
vs. Civil No. 190.
Lone Star Defense Corp.

Roy Creel, et al.,
vs. Civil No. 191.
Lone Star Defense Corp.

J. A. Landrum, et al.,
vs. Civil No. 192.
Lone Star Defense Corp.

Appearances.

Lincoln, Harris and Kennedy, of Texarkana, Texas, by
Mr. C. M. Kennedy;
Messrs. W. J. Holt and Pat Coons of Dallas, Texas,
For Plaintiffs.

Wheeler and Atchley, of Texarkana, Texas, by Mr. Otto
Atchley,
For Defendant.

Hearings on Defendant's Motion for Bill of Particulars,
and Defendant's Motion to Dismiss, and Plaintiffs' Motion
for Production of Documents, before his Honor, Randolph
Bryant, Judge of the United States District Court for the
Eastern District of Texas, heard at Sherman, Texas, on
the 3rd day of May, A. D. 1946.

Mr. Kennedy:

If I may, and I would like for the record to show in these cases that Mr. W. J. Holt and Pat Coons of Dallas, Texas, are associated with the firm of Talley, Owen and Talley in cases 173, 175 and 203, and with the firm of Lincoln, Harris and Kennedy of Texarkana in 186, 187, 188, 189, 190, 191 and 192. With that explanation, we are ready to proceed.

The Court:

If you don't mind, give the appearances to the reporter.

Mr. Kennedy:

We have given that to him, but wanted you to know about it, Your Honor, please, sir.

The Court:

All right.

Mr. Kennedy:

I don't know what order the Court wants to proceed in these matters. There are several motions pending. I am sure the Court is familiar with the general nature of these suits. They are overtime suits, overtime compensation.

The Court:

Just what is this contention now that is involved in this?

Mr. Kennedy:

Well, briefly, our cases, 186 through 192, seven of them, were filed in the State District Court in Bowie County. They were later removed to this Court.

The Court:

What organization is that against now?

Mr. Kennedy:

That is against the Lone Star Defense Corporation. They are all against the same defendant. All of these cases before you this morning are against the Lone Star.

The Court:

What is that Is that a United States corporation?

Mr. Kennedy:

They are United States contractors, yes, sir. They are a subsidiary of the Goodrich, I believe, but they were operating the Lone Star Ordnance Plant at Texarkana and all of these cases arose out of the operation down there from 1941 up to the time they closed in about October or November 1st, 1945.

The Court:

Now, what is the source of the charter of that corporation?

Mr. Kennedy:

It is an Ohio corporation.

The Court:

An Ohio Corporation.

Mr. Kennedy:

Yes, sir. They were organized under the laws of Ohio with a permit to do business in Texas, and they have transacted their business here in Texas.

The Court:

All right. You gentlemen proceed now.

Mr. Kennedy:

I don't know what the purpose of the order is.

The Court:

It doesn't make any difference. I just want to get this thing aired out fully and see where we are. These movants would have the burden of proceeding.

Mr. Kennedy:

It may be true. We are the movants in the production of the documents. The defendant is the movant for bills of particulars, and there was a motion to dismiss not fully disposed of at the prior term of Court at Texarkana.

The Court:

What ruling did Judge Davidson make in this matter?

Mr. Kennedy:

On the motion to dismiss he entered a bench docket order only. There is no formal order permitting us, the plaintiffs, to amend in five of these cases. The allegations for motion to dismiss and strike were based on the ground that was a class action and there was no allegation that the particularly named plaintiffs had authority to represent the various named employees in the bill. And that they were not authorized to proceed with those cases, and that they were not similarly situated. That is the substance of their motion to dismiss.

The Court:

Did he rule on that motion to dismiss?

Mr. Kennedy:

He didn't sustain it and he didn't overrule it.

The Court:

He didn't say "nay" and didn't say "yea".

Mr. Kennedy:

He passed it subject to our amendment and we have filed the amendment here today. Mr. Atchley says he is ready to take them up.

The Court:

Any way that is agreeable to you gentlemen is all right with me.

Mr. Atchley:

If the Court please, I believe that the substance of that motion would probably be understood after we dispose of the motion for bill of particulars. I believe the Court would get a better picture of the case by taking up first the defendant's motion for bill of particulars, and we will all get the picture of the plaintiffs' demands and then we could take up the motion to dismiss, which Judge Davidson indicated was good, but he entered the order allowing them to bring in the employees other than the nominal plaintiffs by amendment so that they would be bound by any final judgment entered.

The Court:

Just confer there and see how you want to take it up. Any way you all agree upon is agreeable to me.

Mr. Kennedy:

We don't seem to get any agreement, Your Honor please, on the order here, but in the original petition we asked for certain information as to the hours worked, the number of days each week, the number of weeks each month and each year, and the wage rates of these employees were asked in our original petition. We asked that the defendant be required to furnish that into open Court, and, then, they filed this motion for bill of particulars setting up that we have not pled the very things that we

were asking for in our original petition, and we come along with our motion for production of records and we understand that they have made a compilation of the very thing that we want, the very thing that is material to a decision in this case, as to the number of hours each week each employee worked, the number of days each week that he worked, and the wage rate that he worked at and the change in the wage rate, and the length of time from the beginning of his employment to the end of his employment, which we say would show if there is any overtime compensation due him, and they, of course, are denying that on various grounds.

The Court:

You want them to make out your case for you.

Mr. Kennedy:

We think they have got information that is material to us.

The Court:

If your party has got a claim, it looks like they ought to have the information about it.

Mr. Kennedy:

We allege in the original petition that no man knows the exact number of days he worked. He knows he worked for the Lone Star, but he don't know what days of each week. He might have laid off one day. They have complete records. The wage hour law requires them to keep a record of each day a man worked, the hour he punched in the clock and the hour that he punched out, and the number of days each week that he worked and we have got to have that information before we can allege that he worked so many hours each day or so many days each week during the entire period of his employment. And we

say that they have that information. Under Rule 34 we are entitled to be furnished with the information if they have it. And that is our whole contention here this morning. We understand that they have made the compilation here. They have got a big record here. And we would be from this time until next year getting it up if they already have it. Getting back to the proceeding, originally these seven suits were filed in the district Court, and the United States Attorney, Mr. King, wrote us a letter and asked that they have a sixty day time to make an investigation. At that time it was—

The Court:

What is the government's interest in this?

Mr. Kennedy:

They are Government contractors. They have a contract with the government on a cost plus basis, and I don't know if there is any recovery here, but I am quite sure the government would have to pay it. That is my understanding of it. I am not familiar with the contract. These gentlemen are, but it is a government contract, and the government was interested in it, and the citations were referred to the United States Attorney and he requested that they have sixty days time in which to make an investigation of these claims, to see whether or not there was any possibility of their being valid. That was the policy of the War Department, the Navy Department and the Attorney General's Department at that time. We granted the extension. We presumed that an investigation was in progress, and about November or December 1st, motions to remand the cases to Federal Court were filed, and Mr. Atchley and Mr. Wheeler came in to represent the Lone Star on the ground that the general policy had been changed about making it an administrative investigation. That had been the policy heretofore, and we as-

sumed that it would be followed when these cases were filed, that the Wage Hour Division, the Attorney General and the War Department would all investigate these claims, to see whether or not they were valid claims, whether there was any overtime compensation due, and we followed the same procedure that had been in effect up to that time. And apparently it has been changed, and now since we can't get this information this matter has been delayed since last September, and we think we are entitled to inspect the records, we are entitled to find out just what number of days each man worked. They have got the record. They kept it. The law required them to keep it. We can't see any reason why we shouldn't have it.

Mr. Atchley:

If the Court please, may I suggest, since counsel and I can't agree upon the procedure, that we present these orders in the order that they were filed? We filed a motion for bill of particulars. We would like to present that motion without reference to the other motions so the Court can get a clear view of the question before the Court on that motion, and then take the others up in the order in which they occur.

The Court:

Go ahead and proceed.

Mr. Atchley:

All right, sir. The motions are all alike, if the Court please.

The Court:

Now, are all of these cases of the same general nature of claim? There is no difference in the essence of the claims that are presented by these various suits, is there?

Mr. Atchley:

Well, if the Court please, they are the same only to the extent that they are filed pursuant to the Fair Labor Standards Act. They claim in these suits—may I have one of the petitions, please, in any one of the cases that Mr. Lincoln and Mr. Kennedy filed here?

The Court:

Do I understand that all of them are class suits, or are they just suing individually or what? Are they an aggregate of individuals in the various suits, or what?

Mr. Atchley:

If the Court please, the suit was originally instituted by one plaintiff, alleging—in other words, we'll take the case of J. A. Landrum against Lone Star Defense Corporation. That is typical. He brings the suit not as designated agent for the other employees named in the plaintiff's complaint, nor does he bring it in as a class suit. In other words, the Fair Labor Standards Act authorizes the suit to be instituted by one for himself and as the designated agent of other employees similarly situated, but plaintiff doesn't bring that suit in that manner. Neither does he bring it as a class suit. That was the basis of our motion to dismiss, to strike from plaintiff's complaint all employees except the nominal plaintiff in the Landrum Case, J. A. Landrum. And we had the authorities to support it. We have them here for that matter. Now, if the Court please, has the Court read the plaintiff's petition or complaint in either of these cases?

The Court:

No, I have not.

Mr. Atchley:

Well, the Court asked about the nature of these cases. Frankly, if the Court please, —

The Court:

Here is the point. Now, for instance, I notice that in general, as far as I have glanced through the dockets, that there are two firms of attorneys;—that is, Mr. Owen and Mr. Talley's firm, and then Lincoln and Harris' firm.

Mr. Atchley:

Yes, sir.

The Court:

In this 188, there is a single individual claiming, and in these others there is an individual and et als. Well, now, is there any reason why these shouldn't all be tried as one group suit or what is the situation that differentiates that to make an individual plaintiff in this matter when these others are supposed to be as class suits and brought as representatives of a class? I don't get that situation at all. And here in 199, David B. Deal, just one individual plaintiff against Lone Star Defense Corporation. It is true that seems to be a different firm of attorneys in that matter.

Mr. Atchley:

Of course, they all, if the Court please, grew out of their employment with the Lone Star Defense Corporation in one or more of the more than two hundred different classes of employment that they had at that plant.

The Court:

I see.

Mr. Atchley:

The classification for the labor there at the plant was set up so that these men worked at different jobs. Sometimes they would work at a half a dozen classifications.

They would work as a guard for four or five months. They would work as a carpenter four or five months, and maybe they would go over to the production line where they were loading ammunition and work for four or five months. So different employees worked at from one to a dozen different classes of work.

The Court:

I see.

Mr. Atchley:

As it is, you could hardly bring a suit solely for the guards because if you get all the guards, you have men who have worked at other employment. So it is a conglomeration of various classes of work that is involved in each of these cases, but they all grew out of their employment with the Lone Star.

The Court:

I understand.

Mr. Atchley:

Under the Wage Hour Law. I think they have attempted perhaps to classify them. Our contentions on our motion to make more definite and certain for our bill of particulars are based upon the fact that the plaintiffs do not allege the basis of their claims. We know absolutely nothing about what they base their complaint upon, and reading their complaint or petition is the best demonstration that we can make of that. Now, the motion for bill of particulars is not involved in the cases filed by the Arkansas attorneys

except in one or two of the cases where pleas of intervention were filed and motions for bill of particulars were directed to those motions for intervention. The reason for that is that we were employed in these cases just before the deadline for answering, and we filed formal answer only to avoid default judgment until we could start investigation. The plaintiff's petition—shall I read it?

The Court:

Is that the amended petition that has been filed this morning?

Mr. Atchley:

No, sir.

The Court:

Well, have you read that amendment they have tendered?

Mr. Atchley:

It is an amendment to an amendment, if the Court please. It is not an amendment complete within itself. I am getting, of course, my motion to dismiss confused with my motion for bill of particulars. I would like to direct my remarks first, if I may, solely to the bill of particulars.

The Court:

All right.

Mr. Atchley:

Then I will come to the motion to dismiss at a later time. The plaintiff brings this suit—I am quoting—"individually and for and on behalf of and for the use and benefit of the following named persons, some of whom reside in * * *", and they are named.

"The plaintiff alleges that he and each of said employees have a cause of action against the defendant arising out of their employment, for overtime wages due them under the provisions of the Fair Labor Standards Act of 1938, as amended; and the plaintiff brings this suit for himself and for and on behalf of and for the use and benefit of each of said employees to recover such overtime wages due them and each of them and for liquidated damages, and attorneys fees, all under the provisions of the said Fair Labor Standards Act of 1938, as amended; the plaintiff alleges that the amount due to him and to each of said employees is in excess of the sum of One Thousand Dollars each."

They don't break that down. That the defendant Lone Star Defense Corporation was a corporation organized under the laws of Ohio with a permit to do business in Texas.

"At all times hereinafter mentioned, the defendant was engaged in the manufacture, production and processing of goods, for interstate commerce at or near Texarkana, Bowie County, Texas, that during the times herein mentioned, the defendant owned, operated and maintained an ordnance plant and established in said county and state where it manufactured, produced and processed ammunition and other goods intended for interstate commerce; during the period of plaintiff's and of each employee's employment. Subsequently all of the goods manufactured by the defendant during the times hereinafter mentioned were produced for interstate commerce and were sold, offered for transportation, transported, shipped and delivered in interstate commerce from the defendant's plant near Texarkana, Texas, to various points outside the State of Texas.

"During the work weeks beginning * * *"—

Here is the nearest they have come to stating a cause of action. During the work weeks beginning August 1, 1941, and ending on the date of the filing of this petition defendant employed plaintiff and each of said employees at various times as well as various other persons in the manufacture, production and processing of ammunition and for interstate commerce.

The Court:

When was that original petition filed?

Mr. Atchley:

September 1945.

The Court:

What is the statutory limitation on a claim of this kind?

Mr. Atchley:

Two years.

Mr. Kennedy:

He thinks that. We take exception to that. We think the four year statute applies.

The Court:

I surmised that since you are making claim from 1941.

Mr. Atchley:

That is true. There will probably be some contention on that. The Courts have so far held the two year in Texas. Reading on:

"In various capacities in said plant."

They have also alleged, at various times. They haven't alleged when so we would know what part of the period of time they are claiming.

"Some of such employees, including plaintiff, were employed as mechanics in what was commonly known and designated by said defendant as departments 2165 and 2170. The functions performed by the plaintiff and each of said employees were an essential part of the production of ammunition and goods for commerce as that term is defined by the Fair Labor Standards Act of 1938, as amended, and such operations are and were necessary to the completion of such goods. Subsequently, such ammunition and goods were shipped outside the State of Texas.

"The plaintiff alleges that he and each of said employees during the time of their respective employment with the defendant and during such periods aforesaid were employed for work weeks longer than the applicable maximum number of hours under Section 7, of the Act, and defendant failed and refused to compensate them and each of them for such employment in excess of such applicable maximum in such work weeks at rates not less than one-half times the regular rates at which they and each of them were employed. The employment of the plaintiff and each of said employees for work weeks in excess of the applicable maximum under Section 7 of the Act, without compensating them and each of them, for such excess hours at rates not less than one and one-half times the regular rates at which they and each of them were employed, was in violation of Section 7 of said Act.

"The plaintiff and each of said employees aver that during the time of their employment with the defendant, they did and performed work and labor for it, in excess

of forty hours per week for which they have not been compensated."

"There, if the Court please, is the only allegation in this complaint that they worked in excess of forty hours a week, and they don't allege the date of one single week during the four year period that they worked in excess of forty hours. That is the only allegation they have made on that score.

"That neither they nor any of them, have a complete record of the work and labor performed by them while employed by the defendant; the defendant has an accurate and complete record of each and every hour worked by the plaintiff and by each employee, and the wages paid or purported to have been paid by the defendant, which said record is in the exclusive possession of the defendant, not subject to the inspection of the plaintiff, nor of said employees. Said records will reflect the hour at which the plaintiff and each of said employees clocked in for their work, and the hour at which they clocked out, and will show that the plaintiff and each of said employees put in not less than thirty minutes overtime each day in their employment with defendant; and said records will also show the number of hours for which the defendant paid the plaintiff and each of said employees, and that the defendant is justly due and owing to the plaintiff and each of said employees overtime compensation for not less than thirty minutes per day for each day they worked for the defendant. Said records will also show the rate of pay per hour for each hour of regular employment during a forty hour week and the overtime compensation due the plaintiffs and each of said employees would be one and one-half times the regular hourly rate for each hour of overtime worked by the plaintiff and each of said employees. They and each of

them are entitled to recover from the defendant for each hour of overtime labor done and performed by them under the terms of the Fair Labor Standards Act in excess of forty hours per week. They and each of them are unable to calculate the accurate amount which the defendant owes them and each of them for the reason that the time-clock records and other records of such overtime hours and rate of pay are in the sole and exclusive possession of the defendant; and the defendant should be required to prepare and return into Court an itemized statement showing the number of overtime hours as reflected by the time-clock records kept by the defendant for the plaintiffs and each of said employees, the rates of pay for regular work on a forty hour week basis for each respective period, and the changes in such rates of pay from time to time with the number of overtime hours as shown by the time-clock records during each respective period where there was different compensation per hour."

Plaintiff alleges then that they are entitled to liquidated damages and their recovery. That is their prayer. That is identical with all the petitions filed by Messrs. Lincoln, Harris and Kennedy.

Defendant's motion for bill of particulars is brief and I will ask the Court to indulge us in reading it.

"Defendant moves the Court for an order directing the plaintiffs herein to file and serve a bill of particulars with respect to the following matters on the ground that they have not been averred in the petition with sufficient particularity to enable defendant to prepare its answer or defenses, and on the further specific grounds immediately following a statement of the details desired, to-wit:

"An itemized statement and designation of the total number of weeks, giving the respective date of each week, during which the plaintiff and the other employees named in plaintiffs' petition, each respectively, worked for defendant during the period of time from August 1, 1941, to the date this suit was filed."

I would like to make this observation: Not knowing, not having alleged the particular weeks that they claim they worked in excess of forty hours per week, we have no way of determining, if the Court please, whether they claim in excess of the time shown by our records or not. Suppose in a particular week it should develop our records show that the man worked forty-eight hours, and that he was paid. Where that is shown, they also show that he was paid forty hours regular time and eight hours time and a half, but upon the trial of the issue as to that particular plaintiff, he claims that the records were not true, that on that particular week, instead of working forty-eight hours, he in fact worked fifty-six hours. Now, unless we are advised ahead of time what they are claiming, how many hours he claims he worked each particular week, there would be no earthly way for us to determine by conferring with his co-employees for that particular week whether or not he worked in excess of the time shown by our records. In other words, he does not state how many hours he worked on any particular week. So we don't know, and can't know from plaintiff's petition, what his testimony is going to be, as to how many hours he worked in any particular week. When you spread that over a period of four years, it is quite a task.

Now, the next particular that we ask is the number of hours the plaintiff and each employee named in his petition worked during each particular week, designating the respective dates thereof for each of them from August, 41, to the date this suit was filed.

Grounds are as follows:

"Plaintiff and the employees named in said petition have not alleged, neither can this defendant determine from said petition, with any reasonable certainty, whether or not the plaintiff and the employees named in said petition, or either one or more of them, worked in excess of forty hours per week during one or more weeks, or if they, or either of them did, the number of overtime hours they and each of them worked during each such particular week, or the particular week or weeks by dates that they and each of them worked overtime during the period of time from August 1, 1941, to the date this suit was filed. Nor can defendant determine when each respective claim of the plaintiff and the other employees named in said petition for overtime compensation for each particular week accrued, so as to enable the defendant to know or determine which of the weekly overtime claims presented in such petition, each respectively, are barred by the two year statute of limitations."

Which statute the defendant will timely plead in bar of the claim. Now, no claim arises under this act unless he works in excess of forty hours per week and if he is paid on a weekly basis, and I think counsel will admit that, his cause of action for overtime claimed by him to have been worked and not paid for, would accrue upon the pay day following the week that he worked for hours in excess of forty hours that he claims he worked and didn't get paid for.

Now, not knowing which weeks he claims he worked overtime, the dates of the particular weeks, nor the number of hours that he claims he worked in excess of forty for any particular week, there is no way by which you could apply the two year statute of limitation to his claim or any part of it. They can't take an average overtime.

because the Courts have condemned that as a method of proving that as a right to recover under the Fair Labor Standards Act.

The Court:

I thought these decisions were uniform to the effect that these employees making claims of that kind had to be very specific in the enumeration of the time and the instances of it.

Mr. Atchley:

That is correct.

The Court:

Go ahead.

Mr. Atchley:

The next one, if the Court please, we ask for the hourly wage rate of plaintiff and the other employees for each particular week, and fractional part of a week where a different wage rate applied to any employee or employees named in the petition during the period, from August 1, 1941, to the date this suit was filed.

The grounds are that the:

"Defendants cannot determine with any reasonable certainty from plaintiffs' petition, the amount of wages allegedly due plaintiff and each employee named in said petition for each particular week."

No. IV. We desire a detailed statement of the duties of plaintiff and each employee named in said petition and an accurate description of the duties performed during each particular week giving the date of each during

the period of time from August 1, 1941, to the date this suit was filed.

Our grounds are that:

"Plaintiff and the other employees named in said petition have nowhere alleged their respective duties or a description of the work performed by them, each respectively, during any of the weeks between August 1, 1941; and the date this suit was filed, by reason of which defendant cannot, with any reasonable certainty, determine from plaintiffs' petition the employee classification and consequent applicable wage rates of plaintiff and the other named employees, each respectively, during each particular week which they, each respectively, claim to have worked in excess of forty hours per week, nor can defendant determine from said petition with any reasonable certainty, whether or not the work or employment of plaintiff and the other employees named in said petition, each respectively, came within the provisions of the Fair Labor Standards Act or within the exemptions and exceptions contained in said act."

Now, there are a number of situations, number of classes of employment wherein the plaintiff is not entitled to recover for work in excess of forty hours per week, such as employees working in a bona fide executive, administrative or professional capacity. They, nowhere in this petition, state the classification, the character of work they did, the nature of the work they performed nor their duties, so that we can determine whether or not any one or more of those employees are exempt under the executive, administrative and professional exemptions contained in Section 13a of the Act. And, of course, if they are bona fide executive, administrative or professional employees, regardless of the overtime they may have worked, they are not entitled to compensation.

Now, if the Court please, that is the motion that is involved in—I don't have those numbers on my tongue—the cases which were removed from the State Court to this Court. We think that we are entitled to be advised by the pleadings the nature of plaintiff's claim with some degree of certainty. Indeed, with such certainty so that we can determine how many hours he claims he worked in excess of forty hours for every week during which he is making this claim. Simply to allege that I have a cause of action against the Lone Star Defense Corporation for overtime work during a period of four years without stating what week or weeks I worked in excess of forty hours—

The Court:

I see your position very clearly, what you are claiming, but what about your motion to dismiss? Are you serious about that or not?

Mr. Atchley:

I am very serious about that, if the Court please, and I have the authorities to sustain me on that position.

The Court:

What is the ground of your motion to dismiss?

Mr. Atchley:

I will read it, if the Court please. It is only a page and a half.

"Comes now Lone Star Defense Corporation, defendant herein, and moves the Court to strike from plaintiff's petition and complaint the names of all employees named in plaintiff's petition or complaint except the plaintiff himself, for the following reasons, to-wit:

"None of the employees named in plaintiff's petition or complaint except plaintiff, have joined plaintiff as parties to this action, nor have they intervened as parties in this action, nor is it alleged, nor does the record show, that plaintiff has been designated by such employees as the agent or representative to maintain this action in their behalf as authorized by Section 16-B of Title 29, U. S. C. A., Article 216-B."

"The plaintiff and the other employees named in plaintiff's petition or complaint in whose behalf plaintiff purports to maintain this action are not similarly situated in this:"

"I am not going to read that. After I dictated that ground, I became convinced that it wasn't good in that the plaintiffs each and all worked at different classes of work from time to time."

The next ground is: "The action does not relate to any specific property, and there is no common question of law or fact affecting all persons claimed to constitute the alleged class."

The motion, if the Court please, is briefly this: The new Federal rules of procedure authorize class actions, but the Courts have held that this is not a truly class action, because the evidence that it would take to sustain a verdict for the plaintiff or for the defendant would be different as to each one, and because the questions of law, namely, the question of exemption, would apply to some plaintiffs; would not apply to others, so the Courts have held, and I have the authorities that it is not a truly class action as that term is defined by the new Federal rules of procedure. Then, his right to maintain this suit with the other employees rests upon the provisions of the Fair Labor Standards Act. That act authorizes a plaintiff, a number of plaintiffs to bring the suit, or a

plaintiff to bring it as a designated agent for the other plaintiffs. Now, plaintiff doesn't bring this suit in that manner at all, and we have decisions here on this very kind of question, under the Wage-Hour Law, where the Courts held that where suits were brought exactly like these were brought, and the Courts have held in every one of those cases that it is not a class action. Therefore, it can't be maintained by one for the benefit of others, and it was not brought as the designated agent of the other employees. Therefore, these other employees are not in fact parties to the suit. The Courts pointed out in those decisions that in order for them to be represented in the suit, they had to intervene, or be parties plaintiff, or be brought in by a plaintiff as their designated agent for the purpose of prosecuting the suit under this act. Otherwise, the Courts hold the plea of res adjudicata would not be good against any employee named except the plaintiff himself. If the Court would like to have those decisions I have them here, or, I have the brief that I have prepared to support them. I didn't bring the books because they were too voluminous. I imagine the Court has them here in his library. That is our position on the motion to dismiss.

The Court:

You have a brief prepared on this?

Mr. Atchley:

Yes, sir, I do.

The Court:

Do you gentlemen have a brief prepared on it?

Mr. Kennedy:

We have some authorities on it, Your Honor, but no formal brief on the question. We would like to answer, if we may, the remarks of counsel.

The Court:

I will give you a full opportunity. Are you through?

Mr. Atchley:

I am through with the exception that if the Court would like to read the decisions I have on this.

The Court:

I will read yours. I get your position very clearly.

Mr. Atchley:

I don't care to make any argument other than I wanted to get my position clearly before the Court.

The Court:

All right.

Mr. Kennedy:

Now, if the Court please, in response to the defendant's motion for bills of particulars—counsel has read the amended petitions or amended complaints to Your Honor, and you are familiar with the allegations. It is alleged in paragraph IV that during the work years 1941 and ending on the date of the filing of this petition, defendant employed plaintiff and each and all of the above named employees at various times. We contend that that information of the exact time employed by each employee is in the possession of the defendant. They have the record. The law requires them to keep a record of the daily time. We further allege over here in paragraph VII that the plaintiff and each of said employees aver that during the time of their employment with the defendant, they did and performed labor for it in excess of forty hours per week for which they have not been compensated.

"That neither they nor any of them, have a complete record of the work and labor performed by them while employed by the defendant; the defendant has an accurate and complete record of each and every hour worked by the plaintiff and by each employee, and the wages paid or purported to have been paid by the defendant, which said record is in the exclusive possession of the defendant, not subject to the inspection of the plaintiff, nor of said employees. Said records will reflect the hour at which the plaintiff and each of said employees clocked in for their work, and the hour at which they clocked out, and will show that the plaintiff and each of said employees put in not less than thirty minutes * * *

This is our law suit. Not less than thirty minutes overtime a day. We are suing for that thirty minutes overtime period. That is a definite fixed hour that they were not paid for, and we say that the defendant has in its possession the records of each day the man worked. We don't have it. It is not possible for a man to remember the exact number of days he worked.

The Court:

Do you make any allegation at all about their failure to bring this suit sooner when they could have had a record of it?

Mr. Kennedy:

You mean of the plaintiff?

The Court:

Yes.

Mr. Kennedy:

No, sir. We never have had a record of it.

The Court:

I think they had more knowledge about it than anybody in the world if they were conscious of working overtime. They could have made a record if they had been interested in it. I don't think it is the part of any defendant to make out a law suit for you or any one else. And they are the ones who know better than anybody else about this claim of overtime if they did it. And that is the crux of the whole matter, as I see it, whether you prevail in that or not. But they had the means of making and perpetuating a record if they ever had the thought of bringing a law suit about it.

Mr. Kennedy:

It will develop—

The Court:

I know, but here is the trouble now with your position. You are just bringing a law suit, and of course, based on what these people tell you I am sure.

Mr. Kennedy:

Certainly.

The Court:

But you are just asking that these people oblige you by making out a law suit for you, and I don't understand that that is the duty of any defendant. And that the man who is making the claim has the burden of proving his claim, and it is true what you say about these people having the record. But the point is that your parties plaintiff have the means of making the records and they are more aware of what hours they worked or claim they worked than anybody in the world, and it is their burden to sustain their claim, and not for the defendant to prove it for them. And I can see the liabilities and possi-

bilities of imposition, and no criticism of your attorneys, but these enterprising gentlemen whom you represent, and who want to get paid, probably some of them for nothing,—they just imagine they did, might have done it, some of them. But I don't see where it is their duty to make out a law suit for you or for them.

Mr. Kennedy:

If Your Honor please,—

The Court:

I am going to hear you fully, but that is the crux of the matter. And there is much point in Mr. Atchley's position about the liability, the imposition upon this defendant, not by you gentlemen, but by these enterprising, ambitious and seeking clients of yours, who sit by for four years and never be conscious or make any demand for payment for this overtime, and then come and use a high jack, a blackjack on somebody after the lapse of four years. Now, it is no criticism of you attorneys, but I can see the possibility of the rankest kind of imposition, which I am not going to subject anybody to, and then, I think that probably—I don't know—I am not judging any law, but I have the general impression that your claims are subject to the bar of the two year statute of limitations.

Mr. Kennedy:

That may be true.

The Court:

I am not passing any judgment on that, but that is my general disposition or belief.

Mr. Kennedy:

Be that as it may—

The Court:

Of course, if that is the law—I am not making any ruling or pronouncement, but that is my suspicion what the law is about these claims. If you did that, and you didn't require these people to specify that time, why, they would just get it for any period of time in the world.

Mr. Kennedy:

He could very easily plead the two year statute, and it would apply from the two year time he filed his law suit. He don't need any allegation of work weeks. He can plead the claim is barred by the two year statute and then the burden is upon the plaintiff to bring his claim within the two year statute. When he pleads the two year statute, that is a bar for all beyond the two years; if it is good. We are not conceding that. If it is good, that is all he would have to do, is plead the two year statute, and the plaintiff couldn't show anything beyond the two year period. He doesn't have to have a definite day or definite week for that kind of allegation. If Your Honor please, this law suit is predicated upon this fact: We are not here trying to high jack the Lone Star.

The Court:

I am not saying that critically of you gentlemen. I am sure that there are some probably good faith claims in here.

Mr. Kennedy:

Here is the history of it.

The Court:

But regardless of that, if they haven't been paid.

Mr. Kennedy:

There are some eight hundred employees in this suit, about twelve hundred in Mr. Owen's suit, and our par-

ticular claims are based on this: That each one of these employees clocked in at 7:45 in the morning and he clocked out at 4:30 in the afternoon; eight and one-half hours clock time and the Lone Star Defense Corporation paid them for only eight hours.

The Court:

And he probably did about four hours work from my observation.

Mr. Kennedy:

That may be true, but they were out there eight and a half hours.

The Court:

That is neither here nor there. But you want the clock time.

Mr. Kennedy:

I want the clock time and that is the only way we can make our case.

The Court:

I am going down and get a cup of coffee, and I will be back in fifteen minutes, and I want to cogitate a little about this matter. But I get your position very clearly, and, of course, if they are entitled to it under this law, why, they are entitled to it.

Mr. Kennedy:

That is correct. We are not trying to get anything we are not entitled to. If the law don't allow it, we don't want it.

The Court:

I think I possibly see the situation clearly between you.

(Proceedings had after recess as follows:)

The Court:

Now, Mr. Kennedy, do you have anything further to say?

Mr. Kennedy:

If Your Honor please, just a few remarks, and then Mr. Holt would like to make a remark or two if you will permit him.

The Court:

Yes, sir.

Mr. Kennedy:

On this question of the granting of the motion for bill of particulars. That seems under the authorities to be in the sound discretion of the Court whether they be granted it. Moore's Federal Practice, Vol. 11, page 656. Harper vs. Harper. Court Civil Appeals, 4, 252 Federal. 39 Alaska. Muench vs. United States, Court Civil Appeals, 8.

The Court:

Let me ask you a question. Is your whole claim predicated on this clock time or that is, that portal to portal time?

Mr. Kennedy:

Our particular claims are, if Your Honor please. It is not true as to Mr. Owen. He has some. But ours are based on the fact that these employees clocked in and were required, mind you—

The Court:

I understand.

Mr. Kennedy:

—to stay on the ground for eight and a half hours, and they paid them for eight hours. That is our law suit exactly. Here is a case, if you will permit me, Paxton against Askew in the District Court of Georgia, 1940, 35 Federal Supplement, 519.

The Court:

Let me ask you, I am going to try and convert this into more or less a pretrial if there is no violent objection. But do you concede that point about this clock time, or not?

Mr. Atchley:

That he is entitled to between the clock range?

The Court:

No, but about the facts that he is representing.

Mr. Atchley:

We are not agreeing to that. We are agreeing that the contrary is true.

The Court:

The thing, of course, that I have got probably in mind is in the event a trial is had of these matters, just the method and manner of trial. It looks like that is going to be my future occupation for the next two or three years if you have got two thousand employees' claims to try. But I was thinking about the method and manner of developing this testimony if a trial was demanded. Of course, I haven't overruled your motion to dismiss yet. I suggested the possibilities of it to my Court reporter a few minutes ago and he nearly fainted.

Mr. Atchley:

Let me give the Court the benefit of this: These employees that are named here as plaintiffs are not only wage earners. Only wage earners clocked in. The salaried employees did not clock in.

The Court:

That is neither here nor there about this matter except as to the possibility of a trial.

Mr. Kennedy:

I think we could simplify it if we could get this information. We will cooperate every way we can. We haven't been able to get much from the other side so far.

"In action to recover unpaid minimum wages and overtime compensation allegedly due under this chapter, that part of employee's motion for bill of particulars on ground that complaint did not set out what amount was being sued for by employees would be overruled where complaint, as to employee, alleged that during a designated period employee was not paid statutory minimum wage, and was required to work more than statutory hours, and employer, if within provisions of this chapter, had records which would give employee information which could not be obtained by discovery and interrogation. *Paxton vs. Askew*, District Court of Georgia, 1940, 35 Federal Supplement, 519."

"A motion for bill of particulars as to evidentiary matter not required to enable the moving party to prepare his respective pleading should be denied. Such information should be sought by discovery. *Westmoreland Asbestos Co., Inc., vs. Johns-Manville Corporation*, District Court, New York, 30 Federal Supplement, 389."

"Motion by defendant for bill of particulars will not be granted before answer if it does not aid the expeditious disposition of the case, and if the complaint states the facts with sufficient particularity to enable the defendant to answer. *Fried vs. Warner Bros. Circuit Management Corp.*, District Court Pa. 26 Federal Supplement, 603."

"Only those particulars should be ordered which are necessary for the formulation of a responsive pleading and are not within the knowledge of the moving parties. *Craft Corrugated Containers vs. Trumbull Asphalt Co.*, 31 Federal Supplement, 314:"

We think those authorities clearly give the Court the judiciary power to either grant or deny this motion for bill of particulars, but we say under the facts that they have all of the information within their possession. It is all evidentiary matter, that they can look to their own record for just definitely what we are asking them to give us.

On the motion to dismiss, Judge Davison heard that at the last term in Texarkana, and he entered an order, I think you will find it on the docket there, that it was passed subject to an amendment. We have today filed this amendment to the five suits in which that question is involved, and the amendment reads like this:—This is 192.

"Now comes J. A. Landrum, with leave of the Court had and obtained in open Court, and files this amendment to his First Amended Original Petition or Complaint and for such amendment says:

"I. The plaintiff J. A. Landrum brings and maintains this suit for and in behalf of himself and all other em-

employees named in Paragraph Numbered I of his first amended original petition or complaint, he and all other of said employees being similarly situated; and said employees named in Paragraph Numbered I of his first amended original petition or complaint have designated him as their agent to bring and maintain this suit for and in behalf of said employees, all of whom, together with himself, are similarly situated.

"II. In the alternative, if it be held by the Court that this action may not be maintained by the plaintiff in the capacity stated in his first amended original petition or complaint, and in Paragraph Numbered I of this amendment, then, and in that event only this suit is brought and maintained by the plaintiff J. A. Landrum and by all other employees named in Paragraph Numbered I of his first amended original petition or complaint as individual plaintiffs; and in such event the plaintiff J. A. Landrum and all other employees named in Paragraph Numbered I of said first amended original petition or complaint pray judgment be rendered for them and each of them in their individual capacities as plaintiffs for all overtime compensation * * *"—

Then the remainder of the prayer for judgment if that should be the ruling of the Court.

Now, the particular wording of the statute with respect to these actions is as follows:—This is Section 216. Says:

"Any employer who violates provisions of this Section, 206, and Section 207 of this title shall be liable to the employee or employees affected in the amount of the unpaid minimum wages or the unpaid overtime compensation as the case may be and in addition, an equal amount as liquidated damages. Action to recover such liability may be maintained in any Court of competent

jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated."

We might say this:

The Court:

What was the cause of the removal in this case? Was it diversity of citizenship or was it under the claim that it arose—

Mr. Kennedy:

Diversity of citizenship was the main ground, and we didn't contest it. We filed a contest to it, and we abandoned it on the removal. We frankly and conscientiously believe—

The Court:

This diversity of citizenship was the sole ground of removal?

Mr. Atchley:

Sole ground for removal was diversity of citizenship.

Mr. Kennedy:

Sole ground for removal was diversity of citizenship. We didn't contest it. We filed a contest and waived it. We think, however, it was good. But it don't make any difference. We had just as soon be in Federal Court as State Court.

The Court:

That operates both ways. I would just as soon you would be in the State Court as in the Federal Court.

Mr. Kennedy:

~~There are a lot of matters here that have to be threshed out.~~ We don't want to burden the Court.

The Court:

I want more time. I am not going to rule on this matter now, because it is of too much importance now to both of you. I want an opportunity to consider it. Now, is there any possibility—I will hear you in just a moment. ~~Is there any possibility of you gentlemen being ready for trial by the regular term of Court at Texarkana in the event this matter should be ruled on in the next four or five days?~~

Mr. Kennedy:

I don't see how it possibly could.

Mr. Atchley:

No, sir.

Mr. Kennedy:

If you should grant the motion for bill of particulars, we would have to re-plead. If you should grant the motion for production of documents, it would take us some time to inspect the documents and meet his bill of particulars. It looks like if you grant one, you would have to grant the other, would be our off hand opinion.

Mr. Coons:

May it please Your Honor, the first thing I would like to say in order to establish our position in this thing: I think that we had virtually a similar re-action that Your Honor has to this type of litigation when it was first brought to our attention. Mr. Holt and I sat down and looked the situation over and inquired why this case was brought at the time it was. We found it was brought

during the war and some two months prior to the closing of this plant and that it is actually a simple case, though it is very voluminous, in that either these people are entitled to this money or they are not entitled to it.

The Court:

I see it is not so complicated as it might appear. That is, so far as the issue is concerned; that is, the fact issue, but go ahead.

Mr. Coons:

I thought about it as simply this, if Your Honor please, in some of these cases, two or three of them, there are four or five hundred employees. Say, had this case been brought a year ago while the war was at its height, and we had sought this information on behalf of these employees, no doubt the Lone Star Defense Corporation would have said "here are our records. We want to satisfy our people." The Act of Congress provides that if they are working overtime, they should be paid, and here is the situation. Mr. Owen, for instance, had a case last year where this Arkansas Ordnance Plant was involved, where they readily brought in their records and said "here are our time records and here are the records of our employees", and they sat down and worked the thing out, said "yes, we do find some overtime due in this case". The situation is at this time that the Lone Star Ordnance Plant is no longer in operation. The war is over. There is no duty as far as the employer is concerned over those employees, other than possibly to take a definite stand in this case. In the event they can successfully deny these people the right to these records, they can successfully defeat their claims. For instance, if Your Honor please, there is the guards' case. That case involves some four hundred guards, who, and our contention is, on some days of the week worked more than

three hours overtime. They were required to report and put on uniforms for certain drills for which they were not paid. Those particular employees are scattered over a wide area. They are not up at Texarkana. In Arkansas and possibly on the West or East Coast. We represent those people in their claims. We are not contending for a nickel for any one of them, and I would say we would be the quickest people to kick them out if there is a false contention on their part. Every issue of fact that is raised, I believe, is contained in this compilation right here on the desk. We can sit down and go over this thing and it can be worked out in most instances. There are still going to be some doubtful issues in several of the cases that will have to come before Your Honor. But no doubt these matters can be worked out satisfactorily between the parties. The facts will be well known. We will make no false contention. We don't want anything for any one of them that we are not entitled to, and, on the other hand, if this public Act of Congress—

The Court:

The only thing is that things might be misrepresented to you by your clients. That is the only thing I was insinuating. Of course, no lawyer is responsible for that. You have perhaps seen the experience. I have had clients lie to me about their cases, but that is not of any controlling importance, except that it looks like to me that in view of all this time that has elapsed and these people who claim that they did the work should know better than anybody in the world the extent, the amount of work and the time they spent on the job.

Mr. Coons:

That is the very point that I wish to make. They are scattered around over the country now. The Act provides that one of them may bring a suit. The act itself

establishes a procedure that one of them may bring a suit for the benefit of all others similarly situated.

The Court:

I understand.

Mr. Coons:

For instance, this guard situation. We could bring one of them in here and establish what the general procedure was, but so far as establishing a liability for each one of them personally is concerned, I think we would have to bring them all in Court. I know Your Honor is not going to sit here in Court and listen to five hundred witnesses testify.

The Court:

I will if it is necessary, but I don't relish the thought.

Mr. Coons:

Our thought is we don't want anything except just what these men are entitled to and what the definite facts show. Why can't we sit down with these people and have these records that are records that were made under public contract? If it was a contract, we would go to Washington and get it. All these dilatory pleadings and motions that are filed as far as we are concerned are ridiculous, because either the facts show that we are entitled to it, or they show we are not entitled to it, and if any of them show they should be denied, we are going to be the first to kick them out. These records that they say are personal and privileged that have been compiled by government auditors should be available to us. If we are required to plead more specifically, then, we can take those records and show each one of our clients. Five hundred men can't remember 365 days each year. Those records are going to show whether he worked 365 days

a year. It is information that we must have to show those matters. We have got to take those records to show the number of days that they were present. Certainly five hundred men can't remember each day that they were present and working during that period of time. Those records are going to establish this litigation. It is a short cut. It is one that we are entitled to under Rule 34 of discovery, and make a photostatic copy of it. We will do anything Your Honor directs, but we must have it or this litigation is going to fail. I think we are entitled to it. We feel we are entitled to it. If there are those that shouldn't be paid, they are not going to be in litigation. If there are those who should be paid, then we will contend for it.

The Court:

All right. Well, now, Mr. Atchley, if there is not any possibility of this trial at the May term down there, and in the event a trial is demanded under these rules, which I am not going to pass on today, but which I hope to do soon, I will take it up with you gentlemen by correspondence and see about fixing a specific time for it; in the event a trial is demanded, I am going to call you together though and have a pre-trial conference and see what we can do about some short cuts in eliminating a whole lot of this. But I can't do anything until I rule on these questions you have raised, and know where we are on those, and then, if a trial is demanded, I am going to have a pretrial hearing and iron these things out as far as we can to the dismay of the Court reporter probably.

Mr. Atchley:

If the Court please, do I understand—

The Court:

I want your brief on it and I would like for you gentlemen to give me a memorandum of your authorities, about

your position, about your right to this information. Can you do that within ten days?

Mr. Kennedy:

Yes, sir.

The Court:

Is that time agreeable to you, Mr. Owen?

Mr. Owen:

Yes, sir.

The Court:

And you gentlemen?

Mr. Coons:

Yes, sir.

Mr. Holt:

Yes, sir.

Mr. Atchley:

If I understand, counsel has presented in a brief way his motion for production of documents. Is that under the consideration of the Court now?

The Court:

Yes, sir.

Mr. Atchley:

If the Court please, I would like to be heard on that for just a moment.

The Court:

All right.

Mr. Atchley:

If the Court please, they have made a motion under Rule 34, requiring the defendant to produce the files which the attorneys have had compiled for the defense of this law suit that contains the authorities and the brief and everything else. It is not the original time records. That isn't the thing that is before the Court. They are asking for a compilation which was made under our direction of all this information and not the official time keeping records, if the Court please. I can see, I think they are entitled to inspect and copy or photograph the original records if they make a motion designating the particular records that they want to inspect and photograph. We are perfectly willing, if the Court please, for them to do that, if they will designate those records, but not, if the Court please—Now, I have brought a sample compilation to demonstrate to the Court that this is my private files that I have prepared. This isn't any part of the official record. It was compiled after the law suit was filed. We don't think they are entitled to go into my files and examine my records.

Mr. Coons:

May I say to Mr. Atchley in that respect we don't want anything that he has made as a defensive issue.

The Court:

Their motion is just for the production of records, as I understand. Isn't that your motion?

Mr. Coons:

Our motion is for the production of this compilation which was made by auditors and clerks working for the government under Mr. Atchley's direction, which is a resume of all those things out there. Mr. Atchley says that is a privileged communication because it was made

for his use, but it was made by auditors and clerks of the government under his direction, and it is a summary of the whole thing and we think we are entitled to it.

Mr. Atchley:

It was not made by any government auditors, if the Court please. When this law-suit was filed, we realized that there were so many employees we could not remember in our mind the information applicable to each employee. We prepared a form that would give us for our benefit in pleading and in trying the case information with respect to various employees and asked the Lone Star Defense Corporation to prepare those, which they did. They are not any part of the official records. They are hearsay.

The Court:

I think I see the whole issue between you clearly, and I will give you a prompt ruling on these questions. I don't know who it will help or hurt at this time, but is your brief prepared now?

Mr. Atchley:

Yes, sir. It is just in my note book. When the Court gets through with it, I would like to have it back because I only have one copy.

The Court:

I will give you gentlemen ten days in which to reply to this.

Mr. Atchley:

We are taking the position if the Court please, that the Fair Labor Standards Act does not apply with respect to any of these employees, and we have authorities to sustain it in this particular instance, with this kind of

contract that the government has with Lone Star. Now, we think the issue of coverage of the Lone Star Defense Corporation with respect to all of these cases should be consolidated under Rule, I believe it is 74a, for the purpose of trying that issue alone before we go into the merits of the various employees' claims.

The Court:

You take the position that the law doesn't apply to these?

Mr. Atchley:

Yes, sir, I do, and I am very sincere, and we have authority to present that defense by the Department of Justice.

Mr. Coons:

We took that up with Mr. Earl Street of the Wage and Hour Division in Dallas, and he advises us that no coverage in instances between the government, in itself, should not be pled in this case, because it is so well settled that they are in commerce when they are making these things for the government.

Mr. Atchley:

That at one time, if the Court please, was a defense, which the Department of Justice would not let private counsel present. But there has been a recent case, the likes of which has never before been decided, and the Department of Justice has withdrawn that, and our pleadings have been submitted to the Department of Justice and we are authorized to submit that as a defense in all these cases. We are serious in that contention.

The Court:

What Court decided that?

Mr. Atchley:

The District Court of Florida, and it is the only case, if the Court please, on that point.

The Court:

How recent?

Mr. Atchley:

Two or three months old.

The Court:

Has it been appealed?

Mr. Atchley:

I don't know whether it has or not, if the Court please. There has been no report on it if it has been appealed.

Mr. Holt:

I just want to make this inquiry, if Your Honor please.

The Court:

All right.

Mr. Holt:

We are not furnishing them a copy of our authorities. We would if they care to exchange.

Mr. Atchley:

I only have one copy.

Mr. Kennedy:

That is all we have with the exception of the one we gave to the Court.

The Court:

I don't imagine they would be any surprise to either one of you, these authorities.

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Filed May 13, 1946.

TRANSCRIPT OF HEARING AT SHERMAN, TEXAS
JUNE 16, 1947.

(Title Omitted.)

Appearances:

For the Plaintiffs: Mr. Pat Coon, Dallas, Texas. Mr. Wayne Owen, Little Rock, Arkansas. Mr. C. K. Kennedy, Texarkana, Texas.

For the Defendant: Mr. Otto Atchley, Texarkana, Texas.

Be It Remembered, that upon the 16th day of June, A. D. 1947, came on to be heard in the above entitled and numbered causes Defendant's Motion for Summary Judgments, before His Honor, Randolph Bryant, Judge of the District Court of the United States for the Eastern District of Texas, situated and holding Court at Sherman, Grayson County, Texas; and,

That the following is a true and correct transcript of the proceedings shown hereinafter had at said hearing, certain parts of the proceedings had been omitted at request of Defendant's Counsel for whom this transcript is prepared.

The Court:

Are you ready to proceed with the hearing on this motion:

Mr. Atchley:

Yes, Your Honor. I believe the Court back on April 30th entered an order. We now have all those judgments ready for the Court's signature. I think that would be the proper thing, to get those—Let me count them. I believe they are all here.

Mr. Coon:

With reference to those judgments,—as I understand them, they are the judgments on the partial sustaining of the motion for summary judgment. They also include the knocking out of a number of party plaintiffs, whom we failed to include in our bill of particulars,—those parties,—upon Your Honor sustaining a motion for bill of particulars, which required us to set out these parties plaintiff and what their jobs were, certain information. We attempted to contact all of them. Some of them we couldn't get this information from, and some of the names included in this order are particular party plaintiffs or individuals that we didn't have the information to file on. Under the Act in the event of success, I am not certain that these parties—that it wouldn't re-act to the benefit of all of them in the event some of them in the same classification don't recover. We just have that to point out to Your Honor with reference to these particular orders. We do recognize we did not file bills of particulars in accordance with Your Honor's order, but that was for the reason we didn't have the information, because they didn't forward it to us upon our request.

Mr. Atchley:

If the Court please, I just have this observation to make in connection with that. The Court will recall that there

was a rather vigorously contested motion here for the production of records so that plaintiffs' counsel could inspect them and the Court entered that order in January, directing us to deliver to these gentlemen for their inspection all our records of all the employment of these people. Although that order was entered in January, they have never sought to exercise that right.

The Court:

Let me have that order.

Mr. Atchley:

I don't believe they are all here. Will the Court call the list so that I will know which ones are missing? Will you call the list of cases?

The Court:

Do you have them in numerical order?

Mrs. Ruth B. Head (Clerk):

Shall I do that? T. J. Caulder, 173.

Mr. Atchley:

I have that one.

Mrs. Head:

175. James E. Long.

Mr. Atchley:

I have that one.

Mrs. Head:

178. L. L. Mills.

Mr. Atchley:

Yes.

Mrs. Head:

183. J. C. Barrett.

Mr. Atchley:

Judge, there are three, there are several judgments in connection with each one of those cases.

Mrs. Head:

183, J. C. Barrett.

Mr. Atchley:

Make a note of that 183, J. C. Barrett.

Mrs. Head:

186, Charlie H. Little.

Mr. Atchley:

186.

Mr. Kennedy:

I don't believe you have that.

Mr. Atchley:

You filed an objection to that. We want to take those up a little bit later.

Mrs. Head:

187, W. H. Wrenchey.

Mr. Atchley:

Yes, Ma'm.

Mrs. Head:

188, Morris U. Allen. 189, James C. Spears. 190, Joe A. Birts.

Mr. Atchley:
Right.

Mrs. Head:
191, Roy Creel.

Mr. Atchley:
Yes.

Mrs. Head:
192, J. A. Landrum.

Mr. Atchley:
Right.

Mrs. Head:
203, Noble W. Black.

Mr. Atchley:
Right.

(Reporter couldn't hear all that was passing between Mrs. Head and Mr. Atchley.)

The Court:
All right. Are you ready now?

Mr. Atchley:

If the Court please, there are two cases, J. C. Barrett and others, and W. C. Crumpton and others, who are plaintiffs represented by Judge Sam. Watsell of Little Rock. I sent him the original judgments, also two copies, to approve as to form. I have not heard from him with reference to those judgments. Of course,—he has the original. And in those cases he did not file bills of particulars at the direction of the Court, and the Court sus-

tained the defendant's motion to strike his pleading, because he had not complied with the Court's order. I have carbon copies of those judgments in my mass of files I have out here in my car. I think you could properly enter it upon one of my carbon copies. He filed no objection to the judgments. I think those judgments should be signed at this time.

The Court:

When were they forwarded to him?

Mr. Atchley:

About ten days ago. What is the date of the letter?

Mrs. Head:

June 6th.

Mr. Atchley:

June 6th, if the Court please.

The Court:

He was notified of that ruling some time ago?

Mr. Atchley:

Yes, sir. He was notified. I can get those carbon copies of judgments.

The Court:

Well, that is all right.

Mr. Atchley:

Now, there are two other cases here that the Court entered judgments on back in April, April 30th, Morris U. Allen and Charlie Little, where the Court sustained the defendant's motion for summary judgment, because all of their time in the limitation period was worked per-

formed in an executive or administrative capacity. After the Court indicated his intention to enter that judgment and requested orders to be prepared, why, counsel for plaintiff filed what they denominate as a reply to that motion for summary judgment with respect to those two plaintiffs. I don't know, hardly, what disposition should be made here. I don't know whether counsel will want to withdraw that answer. They probably don't. They will probably fall in the same category.

The Court:

They didn't contest the allegation about them being exempted?

Mr. Atchley:

They never did. I am of the opinion under that situation, and I have the decisions, the Court can't even consider that reply.

The Court:

I am not going to consider it, because they have had every opportunity to reply and deny those allegations about the character of their work and I thought I had already signed those judgments in that matter, though. I think those judgments have been signed, Mr. Atchley.

Mr. Atchley:

Have been signed?

The Court:

That is my impression.

Mr. Atchley:

No, sir, they have not. If the Court please, after the objection was filed, I did not know what—

The Court:

Wasn't that the character of judgment entered just a few days ago?

Mr. Atchley:

No, sir. These, if the Court please, were entered upon the basis of these men working in an administrative and executive capacity.

The Court:

Well, there was no denial of that allegation.

Mr. Atchley:

No, sir. That is correct. I think these judgments should be entered at this time.

The Court:

Let me have them. I will sign them.

Mr. Coon:

May we make a statement in connection with those?

The Court:

Yes, sir.

Mr. Coon:

Those particular two cases,—Mr. Kennedy advises me that he was under the impression there would be a setting on the judgment, and he would have an opportunity to answer them on notification of a setting. With reference to those two cases, they are not cases for overtime compensation as are the other cases. Those parties were paid under a semblance of the Fair Standards Labor Act, but the suits are based upon the failure to compute their time properly and they are different in nature from these other suits, those two particular cases.

Mr. Atchley:

I differ with counsel on the construction of those pleadings.

The Court:

What are the pleadings in the matter?

Mr. Coon:

We have filed a reply to the motion for summary judgment. It is late.

The Court:

Well, I know, but as I recall—I don't recall the names of the individuals, but as I recall, the original claim was based upon an allegation of overtime.

Mr. Coon:

The claim in these two cases, the Little case and the other case, Allen case, are based upon the failure to compute their overtime on a proper basis.

Mr. Atchley:

If the Court please, the Court sustained it on the proposition they weren't entitled to overtime because they were executive employees.

The Court:

I thought that was the whole ruling, they were exempted employees, not subject to these overtime allowances.

Mr. Coon:

They were paying them on an overtime basis, but not a proper overtime basis.

Mr. Atchley:

Not these two.

Mr. Coon:

You were attempting to do it, but not on the right basis.

Mr. Atchley:

They were given an extended work week allowance, gratuitous gift, to maintain a differential between hourly rated employees and exempt employees. It was not overtime payment.

Mr. Coon:

With reference to those two cases we have a letter from Mr. Kennedy addressed to Your Honor and Your Honor's reply with reference to those two.

The Court:

Let me have it. Do you have a copy of his letter?

Mr. Kennedy:

Yes, sir.

The Court:

May 7th is the date of your letter, Mr. Kennedy.

Mr. Atchley:

If the Court please, I think I can explain this whole thing in just about two minutes if the Court will let me.

The Court:

All right.

Mr. Atchley:

They claim in this reply here that we have not computed overtime under the Act correctly, and that that is what the suit is about. The Court has held they were not entitled to overtime under the Fair Labor Standards

Act, because they sustained the exemption from the Act of these employees. What counsel is talking about is this: When hourly rated employees, when their basic rate of pay began to arise, there was virtually every differential,—there was at least a smaller differential between the hourly rated employees and executive and administrative employees, and there was given as a gratuity by the defendant what they term an extended work week allowance. That was a gift to these people in order to maintain a proper differential between hourly rated employees and the others. Now, the basis of their claim in this reply is assuming that these men were subject to the Act, which the Court has held they are not. The judgment should be entered at this time.

The Court:

I find here that Mr. Kennedy wrote me under date of May 7th with reference to these, though, and that I wrote him on May 9th, and told him that I would withhold the entry of orders until he had a reasonable time within while to file controverting affidavits and I am going to let him file those and I will consider them. I am not going to sign these judgments at this time.

Mr. Kennedy:

They have been filed and they were delivered to counsel for defendant.

The Court:

Have they been filed?

Mr. Kennedy:

Yes, sir.

Mr. Atchley:

Yes, sir. We have a copy. We take the position,—but I am going to argue that in connection with the other cases at one time.

The Court:

I told him he could file these and there was evidently a special understanding about that matter.

Mr. Atchley:

Here is the copy of the judgments sent to Judge Wat-sell and he did not file any objection to those.

The Court:

What was this instrument filed here?

Mr. Atchley:

If the Court please, it simply listed some names. Do you have it there?

Mrs. Head:

Is it in the file?

Mr. Atchley:

It was simply a bill of particulars. It was the two cases, Crumpton—no, J. C. Barrett, et al, and W. S. Crumpton, et al.

The Court:

Now, are you ready to proceed with the argument on these motions now?

Mr. Atchley:

The defendant is ready, yes, sir.

The Court:

All right.

Mr. Atchley:

If the Court please, as a preliminary, recently, last Saturday I believe it was, we were served with what is denominated as a reply to defendant's motion for summary judgment. I assume they were filed this morning or probably last Saturday. They may have reached the Clerk by the time my copies reached me. That reply if the Court please,—I would like the indulgence of the Court. It is very short. To read it. In order to demonstrate that the Court can't consider it as a reply under the rules under which it was filed, the Court will recall that it must be sworn to by competent witnesses familiar with the facts set forth therein, when in fact it is sworn to by counsel, and the evidence set out in our motion for summary judgment is sworn to by people who are competent witnesses to give evidence on the facts sworn to, and that is a requirement of the rule under which the motion was filed. In other words, hearsay statements, legal conclusions, denials and things of that sort are not considered by the Courts as a basis of a motion for summary judgment or as an affidavit, counter affidavit or denial or reply to it. The defendant says that the plaintiff—we will take one case. They are all exactly alike.

"Come the plaintiffs and in response to defendant's motion for summary judgment state:

"Plaintiffs allege that there are genuine controverted issues to material facts in this cause and that such material facts are shown in plaintiffs' complaint which are directly controverted by the general denial filed by the defendant in its answer."

That is just a conclusion.

"Plaintiffs state that the defendant is engaged in the production of goods for commerce and in acts necessary

for the production of goods for commerce at all times pertinent to the complaint filed herein within the meaning of the Fair Labor Standards Act."

That, if the Court please, is a legal conclusion and no fact stated and incidentally, later on in this reply the plaintiffs admit that the question of commerce is properly raised in this motion and that the facts with respect to commerce are not denied.

Paragraph III.

"Plaintiffs specifically deny that the defendant paid them the monies which it owes them under the Fair Labor Standards Act and in that connection states that pursuant to the provisions of the Fair Labor Standards Act and other Acts of Congress said plaintiffs are entitled to be remunerated at the rate of time and one-half their regular rate of pay for all overtime in which they were engaged as alleged in their complaint.

"Plaintiffs allege that they and each of them were employed under a written contract with the defendant at a specific hourly rate of pay for a specific purpose and under specific conditions of employment."

The facts in connection with that are alleged.

"Plaintiffs further allege that in view of the controverted issues and the magnitude of necessary proof for their determination neither affidavits nor a reasonable amount of oral testimony could be adduced upon a hearing of the motion for summary judgment for the determination of such issues. The plaintiffs represent to this honorable Court that affidavits of the many respective party plaintiffs would unnecessary incumber the record with

the many issues of dispute and render virtually impossible a final determination of such issues upon this motion. However, in that connection, the plaintiffs would respectfully show in response to the lengthy affidavits which the plaintiffs are not in present position to admit or deny in full but which the plaintiffs do categorically deny as follows:

"A. Plaintiffs do state that they were employed upon a written memoranda in writing under which the defendant obligated itself to employ and pay the plaintiffs and each of them at a certain hourly rate, under certain conditions and for a specific labor or service."

If the Court please, that is obviously injected into this thing for the purpose of showing that the four year statute, rather than the two year statute applies. This was filed after the Court had already acted upon the limitation and held that the two year statute of limitation applied, so that is immaterial as far as this hearing is concerned.

Sub paragraph V-B. "Plaintiffs specifically state that the defendant did not pay plaintiffs the full amount of pay due them; did not pay plaintiffs in accord with its contract with the Government of the United States; and did not correctly compute the amounts due and owing plaintiffs for said labor and services."

That is a conclusion.

"Plaintiffs here state that defendant required, directed, demanded and practiced identical methods and usages common to ordnance plants similarly engaged throughout the United States in the employment of similar employees so engaged and wholly failed and refused to compen-

sate the plaintiffs as required so to do for their production activity and time such plaintiffs were so engaged as other ordnance plants did."

I cannot for the life of me see the materiality of that.

"D. That the defendant throughout all times pertinent to this cause operated as an independent contractor upon a cost plus a fixed fee basis and by its contract with the Government of the United States specifically obligated itself to pay plaintiffs the monies they seek under this Act."

"E. That plaintiffs do not seek under this complaint recovery for so-called travel time and dressing time or any time in which they were not engaged in productive activity as that term is commonly and ordinarily defined."

"F. That defendant did recognize the Fair Labor Standards Act and did recognize and operate under its provisions in so far as certain classes of employees at its ordnance plant were concerned."

"G. That the failure to pay plaintiffs the amounts which they are entitled to is the result of neglect and an arbitrary decision by the defendant through its duly authorized agents which the defendant now seeks to justify after the conclusion of the war and the conclusion of its contract; that the defendant cannot justify and equitably explain its failure and refusal to comply with the Fair Labor Standards Act in connection with the classes of employee such as the plaintiffs herein while at the same time justifying and indorsing its acts in connection with those classifications already paid their full amounts.

"The above allegations 'A' through 'G' are intended to acquaint this honorable Court with the true issues in-

involved in this cause without regard to the lengthy affidavit attached to defendant's motion for summary judgment and to indicate that such issues involved in this cause can only be determined by full hearing upon the merits. In that connection plaintiffs represent to this honorable Court that the matters raised by the affidavits attached to defendant's said motion are not appropriate in this motion for summary judgment as such matters raised in the affidavits can only be determined by a full hearing and plaintiffs allege that the only matter for determination before the Court is the question of interstate commerce presented in defendant's said motion.

Plaintiffs state that the defendant is and has been at all times incident hereto engaged in interstate commerce as that term is broadly defined under the Fair Labor Standards Act and the Appellate Courts of this land have often held in connection with the administration of the Act."

Of course, that is just a bare legal conclusion. There isn't a fact stated to support that.

"Plaintiffs would further state that they will be pleased to enter into stipulation with counsel for the defendant or to state fully and fairly all of the real issues involved in these cases to the Court at the pre-trial conference and that such pre-trial conference should be had at an early date in order that the position of these plaintiffs with respect to these claims be made known fully to the Court."

I hope I will not be imposing to state to the Court the object of Rule 56, that where there are issues in a law suit that are not seriously denied and by those facts that there is no dispute about, a law question would determine the outcome of that case. Then, the summary judgment becomes one in which the Court can summarily dispose

of that litigation without going through the farce of a trial. In this instance, if the Court please, the rule requires specifically that an affidavit in support of such a motion—that a motion for such a summary judgment may be supported by an affidavit and when it is, it must be signed by a person,—the affidavit must be made by a person competent to give testimony to the facts stated, and it must not be based upon hearsay, and a lawyer can't make it. If the Court please, that is virtually the terms of the rule itself, as construed by the Courts. Here is what the Court have held about it. The case of *Seward vs. Nissen*, 2 Federal Rules Decision, 45, it was held that affidavits filed by a party in support or in opposition to a motion for summary judgment must present evidence and should follow substantially the same form as though the affiant were giving testimony in Court. In this instance, if the Court please, the reply is more than half of these cases is not even sworn to and those that are sworn to, if the Court please, are sworn to by counsel for the plaintiff, and the Court, I think, could take judicial knowledge of the fact that counsel knows nothing about this law suit except what his client has told him. It is hearsay. He couldn't give competent testimony of the facts stated in it, and in order, if the Court please, for an affidavit in support of the motion or in order for an affidavit in opposition to that motion to be considered by the Court, the party making that affidavit must state in the affidavit that he is a competent witness, and competent to give testimony to the facts stated therein. I dare say, if the Court please, that none of counsel in this case are competent witnesses in this case. At least they don't make any affidavit to that effect, if the Court please, and besides, if the Court please, those that are sworn to are not sworn to as a fact. They are sworn to upon information and belief. And I have decisions here, if the Court please, that condemn that; say the Court can't con-

sider them. In which event, if the Court can't consider the replies, the motion for the summary judgment by the defendant stands unchallenged and the facts stand undenied. Case of U. S. vs. Newbury Manufacturing Company, 4 Federal R. S., 56C, 41, Case 15, says that a statement of attorney as to what he intends to prove on the trial of a case is insufficient to constitute a controverting affidavit under this Rule 56. Case of U. S. vs. Broderick, 59 Fed. Supp. 189, says that a denial by the attorneys is insufficient as a counter affidavit to an affidavit filed in support of a motion for summary judgment.

Earnest against Stacy Music Corporation, 1 Federal Rules, 720, holds that hearsay statements contained in the controverting affidavit are insufficient and cannot be considered by the Court.

By the way, that is also sustained by two decisions of the Circuit Court of Appeals. B'Españo vs. Federal Reserve Bank, 114 Federal 2nd, 438, and Walling vs. Fairmont Creamery, 139 Fed. 2nd, 318, hold that any statements contained in a controverting affidavit that are based upon hearsay cannot be considered by the Court as a controverting affidavit. And then they also hold those last two cases by the Circuit Court of Appeals hold that statements contained in the instrument which are mere legal conclusions containing no allegations of facts to support the conclusions are inadmissible and cannot be considered by the Court as opposing motion for summary judgment.

Case of Music Corporation, which I have already given the citation to, it is held that rule 56 applies, supporting affidavit must be made on personal knowledge, to set forth such facts as would be admissible in evidence and to show affirmatively that the affiant is competent to testify to the matters stated therein.

Case of U. S. vs. Newbury Manufacturing Company, 4 Federal Rules Service, Case 15, holds that the affidavit

must state that the facts therein are made on personal knowledge of the affiant. The affidavit must state that.

Case of Veeder-Root, Inc., vs. Henrietta, 52 Federal Supplement, 918, and State of Washington vs. Maricopa County, 143 Federal 2nd, 871, by the United States Circuit Court of Appeals says that the instruments are not properly sworn to so as to constitute controverting affidavits in that the affidavits were made upon information and belief, that you will not consider those, and the only affidavits, if the Court please, we have here are based upon information and belief. As I indicated to the Court, more than half of these—I can give the Court the names and numbers—are not sworn to at all. Now, here is the crux, if the Court please, of this. As I stated to the Court, in Allen vs. Radio Corporation of America, 47 Federal Supplement, 244; National War Labor Board vs. Montgomery-Ward & Company, 144 Federal 2nd, 528; Board of Public Instruction vs. Meredith, 119 Federal 2nd, 712, certiorari denied, all hold that the failure of an opposing party to file affidavits admit the facts set forth in the defendant's affidavits supporting its motion for summary judgment. From those authorities, if the Court please, I take the position in which I know, I am right, from the condition this record is in, even though those instruments are denominated replies to the defendant's motion for summary judgment, that they have no legal standing in this Court. The Court cannot consider them simply because they have not complied with the rule setting forth what these affidavits must contain, by whom they must be sworn to, and how they must be sworn to. There isn't any semblance of compliance, if the Court please. Therefore, this case stands before this Court for argument upon the legal question of whether or not under the facts alleged in the defendant's motion for summary judgment this judgment should be granted on the ground that the defendant was not engaged in commerce or in the pro-

duction of goods for commerce. Neither have the plaintiffs in this case engaged in commerce or in the production of goods for commerce.

You know, it is quite interesting to me, if the Court please, to review the Congressional Findings and Declaration of Policy when the Fair Labor Standards Act was passed. I would like the Court to indulge me to just read a few lines from that declaration of policy:

"The Congress hereby finds that the existence of industries engaged in commerce or in the production of goods for commerce of labor conditions detrimental to the maintenance of efficient standards of health, necessary for health and general efficiency * * *"

(Remaining portion read was not taken by Reporter, and is omitted at request of Mr. Atchley.)

Now, if the Court please, according to this affidavit, which the Court would have to accept I think as true here, our Government in this instance engaged in a global war, the know-how of mass production of the Lone Star Defense Corporation, a subsidiary of E. F. Goodrich Company, only for the purpose of serving the Government in this war and turning over to the Government its industrial know-how so that they could recruit labor, recruit the proper kind of labor, so as to produce munitions. In competition to others? No. Were they making, if the Court please,—can it be said that the defendant in this case, working you might say in the language of Judge Dawkins as an agency of the State, to recruit labor, to make munitions to try and protect and preserve the American way of life, to try and win the war,—can it be said that it was engaged in competition with other industries making a similar product when, if the Court please, it was on a purely cost plus basis, an agreed fixed fee

basis? The only reason I mentioned that, if the Court please, was to show that Congress never intended this Act to apply to a situation of this kind, where a company was formed, where it devoted its services to the Government, and delivered to the Government its know-how in mass production. There is no such thing as unfair competition in connection with that, if the Court please.

Now, the position is taken, if the Court please, that coverage, that the application of the Fair Labor Standards Act does not apply in this case unless two things exist. The employer must be engaged in commerce or in the production of goods for commerce, and, conceding that he is engaged in one or both, then, in addition to that, the employee must be engaged in work that within itself constitutes commerce or in the production of goods for commerce. Certainly it couldn't be contended in this law suit by the plaintiffs that the Lone Star Defense Corporation was engaged in commerce. They were not engaged in transportation, if the Court please; according to this affidavit, which is true, it stands unchallenged before this Court, the Government bought the land. They furnished the machinery. They built the plant. The entire plant. When the loading of munitions was begun the entire reservation and the plant belonged to the United States Government and the title stood in its name. By reason of condemnation proceedings the land stood in its name and following that Governor Stevenson executed a deed to the United States Government by which he conceded jurisdiction to the United States Government with the exception of the right to serve civil process. So when they started work they started work in a plant that was owned entirely by the Government. They loaded munitions and did whatever they did down there, from parts, components, explosives and materials which the Government supplied through what is called free issue. The material was bought by the Government and shipped under Gov-

ernment bill of lading, marked for military use to itself at this location. Then, if the Court please, it was processed by this defendant. It was then loaded into a car, shipped on Government bill of lading under Government rates to other parts of the Country, to other military establishments, or overseas, wherever that ammunition was consigned. Every bit of it belonged to the Government, and this defendant never was engaged in any type of transportation of that material across the state line, incoming or outgoing.

Now, the position is further taken, if the Court please, —the position here is taken, of course, that they were not engaged in commerce, because the only transportation of goods inbound and outbound across state lines was an act of the sovereign, was the act of our government in the prosecution of a global war and it did not constitute commerce. Congress saw fit, if the Court please, to exempt the United States from the operation of this Act.

Now, we take the further position, we say that they are in error about that. We take the further position, if the Court please, since they were not in commerce, the only question remaining is whether or not they were engaged in the production of goods for commerce. Now, what does Congress say about that? What does it say about goods? It says:

"Goods within the meaning of this Act shall not constitute goods after their delivery into the hands of the ultimate consumer."

That is what Act says, the way the Act reads. They were not engaged in production of goods for commerce. Goods does not include goods after their delivery into the actual physical possession of the user. Under the terms of all shipping orders of inbound stuff, title to all that material that was procured for the use of this plant vest-

ed in the United States Government at the point of shipping. The title was in the Government long before it ever reached that plant according to this affidavit, and I say it is true. Stands before this Court unchallenged. Title was in it long before it came to the plant. Title was in the Government during the time it was in the plant. When the shell was finished it was loaded out, shipped by the ordnance department to wherever it needed the ammunition under Government bill of lading, at Government rates, marked for military use. Title was in the Government at all times. This defendant only worked upon the material.

We take the position, if the Court please, that since the term goods does not include goods after their delivery into the hands of the ultimate consumer, that there is no such thing as production of goods for commerce and certainly—certainly, if the Court please, no one could question with logic that the Government wasn't the ultimate consumer, unless you would go to the remote theory that the belligerent nation was the ultimate consumer of that ammunition. I don't know whether the Court has read or wants us to read the pertinent parts of our affidavit in support of the motion for summary judgment, or not. I would like to abide the wishes of the Court in that respect. There are certain paragraphs, paragraphs 1, 2, 3, 4, 5, 26, 28, 29, 30, 31, 32, 33 and 36 of the original affidavit and also all paragraphs of the supplemental motion for the summary judgment I would like to present unless the Court is sufficiently familiar with it at this moment, has it in mind, to—

The Court:

You go ahead and present your argument just like you want to. I have read it and I am familiar with it in general, but go on and present your argument.

Mr. Atchley:

By reading Judge Lemley's opinion, it sets out the identical facts that exist in this law suit. I think I shall now read to the Court the decision of Judge Harry J. Lemly.

The Court:

Has the plaintiff appealed from the decision in that case?

Mr. Atchley:

Incidentally, Judge Lemly's decision has received very favorable comment by judges over the United States and one in a reported case that I happen know about, and I have that decision here for the Court.

(At this point Mr. Atchley reads the decision of Judge Lemly above mentioned, which is omitted herefrom at the request of Mr. Atchley.)

I call the Court's attention to the fact that the only case by the Courts holding that the Government was engaged in commerce or in the production of goods for commerce was one where the contractor, the employer, did not assemble the munitions of war solely from Government property, but they manufactured, if the Court please, their own explosives; they were in the explosive business. They manufactured their own explosives. They sold those explosives to the Government for use in assembling these shells. But we have no situation such as that in this case, if the Court please. Now, following Judge Lemle's decision—incidentally that is the only case by the Circuit Court of Appeals—and Judge Lemly clearly draws the distinction there. Following that is the case of Kruger vs. Los Angeles Ship Building Corporation, where the Government seized a ship building company

who was engaged in building ships and again, to use the employes for the purpose of building and servicing ships to be used by the U. S. Navy: There is this significant language from that opinion I would like to read to the Court. It is very short, but it is to the point.

"Fair Labor Standards Act makes it only applicability where compensation is claimed for labor performed where the employee and employer are engaged in commerce or in the production of goods for commerce, and has to be determined from the nature of the operations of the employer and the nature of the work of the employee. Under the contract referred to and the evidence, the United States was engaged in a war and was at the ship yard manufacturing and repairing vessels as a sovereign in the prosecution of the war, which was necessary in defense of the nation."

It was not engaged in commerce or in production of goods for commerce. There was no commercial features involved in its operation of the plant as its activities were confined exclusively to the manufacture and repairing of vessels for the United States Navy and the plaintiffs were working on goods such as navy vessels and repair work on them for the United States, the exclusive ultimate consumer and owner. The whole enterprise was that of the Government's. Citing the case, if the Court please, of *Lynch vs. Embry-Riddle Co.*, Southern District of Florida. Those are both by the United States District Court.

Now, since that time, if the Court please, Judge Donovan of the Minnesota United States District Court cites with approval—this is in the case of *Pfoser vs. Federal Cartridge Corporation*, 70 Federal Supplemental, 701, where they had the identical facts we have here, if the Court please, but in that case he held that the plaintiff

was an exempt employee under the terms of the Fair Labor Standards Act and it wasn't necessary for him to pass on it, and the question, the feature whether or not the employee was engaged in interstate commerce or in the production of goods for interstate commerce, but in passing he makes this statement:

"The burden of proof is upon plaintiffs in meeting defendant's contention relating to commerce. The record makes very questionable whether plaintiffs have carried their proof in the foregoing respect. Defendant denies that plaintiffs were in commerce or in the production of goods for commerce within the Act."

And citing those three cases which incidentally pyramided them, all three no stronger than the first one. It goes on:

"Respectable authorities have reached the contrary conclusion", and he cites about four cases on that. Then he cites Judge Lemly's opinion. He says: "The decisions supporting the defendant's contention that plaintiffs were not engaged in commerce or in the production of goods for commerce are collected by Judge Lemly in a well considered opinion in the Barksdale case."

If the Court please, there are other decisions here. I think some of them have been discussed by Judge Lemly. By far the greater weight of authorities among the District Courts of the United States is to the effect that in operations of this character, where the Government owned the entire facilities,—they owned every particle that went into the making of this ammunition, title to all of which vested in them at the point of origin, wherever they were bought, and holding that the act of the Government in transporting that across state lines was

acts of administrative affairs of the Government in its sovereign capacity. The only decision by the Circuit Court is one which Judge Lemly has distinguished, where the contractor was engaged in the manufacture of the explosives used in making these shells, commingled its work, so that its employees were engaged in interstate commerce. We respectfully submit on two propositions that this judgment should be sustained. As I have indicated too many times, perhaps, the facts alleged in the affidavits supporting the motion for summary judgment stand before this Court legally and uncontested. They are admitted. They are taken as true because they have not been contested as required under Rule 56. Under those two grounds, either one of which to me entitles us, the defendant, to a summary judgment: One, that the defendant is not engaged in the transportation of the goods; never has been, and that they were not engaged in the production of goods for commerce, because, 1. The transportation across the state line was an administrative act of the Government of its own property, the Government which knows no state line, and, No. 2 is that all the work was done on this property wholly within the State of Texas, while all the component parts were in the hands, the actual physical possession of the ultimate consumer, and that is what the very terms were of the Atwell suit under which this suit was brought, and we respectfully submit, if the Court please, that these motions for summary judgments in all these cases should be granted.

The Court:
All right.

Mr. Coon:
May it please, Your Honor.

The Court:
All right.

Mr. Coon:

"I had a recent experience, if Your Honor please, with reference to a motion to dismiss, which was filed in a civil litigation. Upon studying that motion I found that the Supreme Court has recently amended the Rules with reference to motions to dismiss, and added language in substance that a trial Court may within its discretion turn a hearing on a motion to dismiss into a motion for summary judgment and hear testimony. An answer to a motion for summary judgment is not required to be sworn to. That is what our pleading is designated as, and that is what it was intended for. I will read to Your Honor from Moore's Federal Practice under the new Federal Rules, Volume 3, Rule 56, Section 3:

"Unlike the practice in other jurisdictions a motion for summary judgment under Rule 56 is not required to be supported or opposed by affidavits. Rule 56 contemplates that the motion may be heard in any of the four following ways:

- "1. Wholly upon affidavits and the pleadings.
- "2. Upon the pleadings, depositions and admissions on file without any supporting or opposing affidavits.
- "3. Upon affidavits and upon the pleadings, depositions and admissions on file.
- "4. Wholly or partly on oral testimony or depositions, the pleadings and such facts and admissions which may appear of record."

Now, if Your Honor please, the fact that the motion for summary judgment has attached to it an affidavit, which in great length outlines all of the proper conduct

of the business of this plant, doesn't lend any greater sanctity to it than the Court by its judicial interpretations and the Statute under which this suit is brought could afford it. In response and by way of analysis there sits in the Court room Mr. Allen and Mr. Little. In the affidavit which is filed by these gentlemen as executives of the Goodrich Rubber Company, who we sue, they state that these two gentlemen, Mr. Allen and Mr. Little, are executive or administrative employees, and therefore excluded from the operation of the Act. They say, why, because as the Act itself provides 20% of their time was not indulged in ordinary labor as the employees and their classifications were required so to do. Now, with reference to the motion before Your Honor, there were three points raised, two of which Your Honor has passed upon. Your Honor correctly ruled that the two year statute of limitation is applicable to it and contrary to any position we recognize the justice and correctness and would not take issue with any ruling of Your Honor.

The Court:

Now, what was this statement in this affidavit about these two particular individuals being under written contract of employment? That is the first time I have heard that claim seriously urged here. Is that in your statement in opposition to the motion for summary judgment in the Little and Allen cases?

Mr. Coon:

If Your Honor please, when we learned a little short time ago that Mr. Atchley wanted some time to amend his motion, we understood for the reason that Congress had passed a Portal Act which had been signed by the President, he filed instead of an amendment to the motion, an amendment to the answer. Is Your Honor familiar with the amendment as filed to the answer? I believe that is the way you filed it.

Mr. Atchley:

That is correct. I pleaded it in terms of the Portal to Portal Act.

Mr. Coon:

We were thinking with reference to the written contract that the Portal Act sets up, that any written contract that obligated the employer would govern in the situation, and if Your Honor please, Mr. Little has handed me this instrument which he signed together with the Lone Star Corporation. It reads as follows: It is designated Assignment Authority. It says: "Name, Charlie Henry Little. Date, 3/30/42. Address, 822 West Knight. Social Security No. 5056726. You are to report for work at once to L. C. Wolff, foreman, in Area Administration, as interchange clerk." That is the classification, if Your Honor please. "Rate, \$200.00 per month. Signed, Lone Star Ordnance Corporation, Texarkana, Texas, by J. J. Conlin, Title"—I can't discern, but it is EMPID, apparently, signature of employee, Charlie Henry Little, dated 3/30/42. So that, Your Honor, is our contention that there was a written contract insofar as the applicability of any such new regulations that might come up.

The Court:

I get you on that. I didn't think that was generally involved in these cases, but I can see where it has application to this individual case.

Mr. Coon:

Further, we have other forms signed by other employees which we contend represent a contract, because the parties signed that, referred them to a specific job at a specific classification at a specific salary and a specific duty, and we say that represents a contract. But in that connection, Your Honor, these gentlemen have by

their oaths said that these two fellows, Mr. Little and Mr. Allen, are not covered by the Act, and by their affidavit they say they were not engaged more than 20% of their time in ordinary labor as required under the Act; that they occupied an executive or administrative capacity. The Court will readily recognize that is a question of fact that can only be determined as to how much time he actually spent. In talking with this gentleman, Mr. Allen, this morning, he advises me that "I was what was known as a field mechanic foreman. I had charge of a group that would keep the machinery going. Assuming that we had a break down in a certain line, it was my duty to see that was repaired as quickly as possible, because we would have some three thousand employees; if a machine was broken down a few minutes, it could mean 1500 man hours lost. So I jumped in and helped always manually." He says in addition: "We employed people who were stating that they were mechanics. They were not really capable mechanics. I had experience and I worked every day manually." Now, I said, "Well, Mr. Allen, do you know any of these gentlemen who are executives lined up across the wall over there who made the affidavit that you didn't work 20% of your time?" He says, "I recognize one of them." Now, I venture to say the gentleman who made that affidavit here of these gentlemen with the Goodrich Rubber Company never saw him before; never had any personal experience with what he was doing. So we can offer his testimony, and we are prepared to do it for Your Honor's consideration. He has, if you please, sir,—Mr. Little, he has every check that he received from those people. Mr. Little will testify just exactly what his duties were from day to day. He has personally calculated how much money he has received, how much overtime he put in, how much money he received for overtime, how much money he is entitled to and here is every check that he re-

ceived. Now, we say that maybe this gentleman, Mr. Little, is not given to all the great verbiage and speech in the affidavit and maybe he can't explain himself as well as those gentlemen can, but he is entitled to put that matter in issue by stating that he did work manually, that he was not an executive and an administrative employee within the Act. If Your Honor please, since the filing of these suits there has been a great deal of water passed under the bridge. Since the filing of these suits a great rash of so called portal to portal suits broke out over the country, and the Courts were disturbed about it and looked upon them with little favor. The Congress was disturbed about it and passed an act and the President signed it. During that period of time cases that had been brought under the Fair Labor Standards Act have suffered. The Fair Labor Standards Act may or may not be a good law, but what it provides or intends to provide is a standard living wage. The Act makes no exemptions insofar as employees subject to it are concerned. It subjects all labor to it. The only concern in this question that we have is with three Sections of the Act, the definition of commerce, the definition of goods and the penal provision, for there is a criminal provision which is worthy of consideration. Those three definitions govern this situation. Now, bearing in mind that in spite of all that Your Honor has heard since this argument started, there have been two District Court cases, one by Judge Lemly, one by Judge Dawkins and one Circuit Court case involving this problem. All three involved ordnance plants. All three were suits against contractors who were working on a cost plus, a fixed fee basis. All three contractors were sued for overtime compensation and their contracts specifically provided that all employees must be paid under the Fair Labor Standards Act. That is this contract under which we sue the Goodrich Rubber Company or the Lore Star Corporation.

That was the contract in each instance. Now, so far as the law of this land and the writing of any Appellate Court is concerned, Bell vs. Porter is that law, and I would read Your Honor the specific language to say that the munitions that they were making in this plant had any different classifications than in the Lone Star Plant, I am not prepared to say, but I am prepared to read specific language which is identical with the contention of the defendant in this case. "The Constitution confers upon Congress the power to regulate commerce among the several states."—This is Bell vs. Porter, decided by the 7th Circuit on December 10, 1946, and in which a writ of error has been denied. In this case Judge Lindley, Judge, I believe, in the Eastern District of Illinois, heard and wrote on this case, citing what some Circuit Judge heard and wrote on this: "This power to regulate commerce is not confined to commerce or transportation. From an early date such commerce has been held to include the transportation of persons and property, no less than the purchase, sale and exchange of commodities and goods may cover in commerce, though they may never enter the field of commercial competition. For example, the movement of people across state lines and the unrestricted ranging of cattle across the boundary of two states is commerce. The interstate transportation of whiskey for personal use, of a woman from one state to another for immoral purposes without any element of commercialism, of a kidnaped or a stolen automobile, all constitute interstate commerce in the Constitutional sense. These cases we think make it clear that interstate commerce is not limited to interstate trade."

Now, if Your Honor please, the theory that these gentlemen have and the theory that in my opinion has confused the trial Courts where it has been raised recently and the same question was brought before this Appellate Court, the 7th Circuit, they have said, "Yes, but the Gov-

ernment is engaged in a Governmental function of the prosecution of the war," and that one item alone can be the only thing that has caused them to put their finger on an error or a ground for reversal or a ground for their holding that the Act doesn't cover.

Specifically, there is nothing in the Act that could or would exclude the Government. There is no question of the interstate movement. The Government was manufacturing through contracts with numerous other people shell cases and all of the many items that it wanted to assemble at this Lone Star plant, and entered into the contract with Goodrich to receive all those things down there with the Lone Star Corporation, and there was no question about the great influx of commodities and the great outgo, all across state lines. Then, this Bell vs. Porter case goes on to say with reference to the commerce question, the commerce definition, that it intended commerce in the broadest sense, the constitutional sense. "No where in the Act", the opinion in substance says, "is the government for any reason excused." There have been numerous cases, too numerous, where war contractors have been involved and have been held subject to the Act. Many of them. The definition of commerce, if Your Honor please, as defined in the Act is "Commerce means trade, transportation, transmission or communication among the several states or from any state to any place outside thereof." It is as broad as it could possibly be.

That term "commerce" never excluded anybody, and only the Congress could have specifically excluded any corporation or the Government. Now, going back to just preceding that, the purpose of this law was to eliminate detrimental labor conditions. It was to eliminate labor conditions that affected transportation in commerce, and some of the cases that were read to you by the parties—I mean from Judge Lemly's brief there concerned how

broad this Act had been construed. They have held, the Courts have held—for instance, one of them was with reference to working on a navigable river and all of those authorities that have held that you are working, that if the employees are engaged in repair or maintenance of any instrumentality of commerce, that it is so closely related to commerce that it comes within that broad definition. Trucks of motor freight lines, employees that are engaged in working on those trucks of motor freight lines come within the Act, and after all these were the employees of Lone Star. Bearing in mind that we are suing Lone Star and that all of the employees were working for Lone Star, and it is only a question of whether the employees come within the Act, and they can only be excluded by a specific exclusion under the Act. Another and the only particular exemption within the Act, if Your Honor please, is the exemption of the United States Government, every state or political subdivision thereof from the definition of an employee. That is, the employees of the United States, the employees of the State of Texas and of every political subdivision of the State of Texas are exempt. Had it been the intention of the Congress to permit employees other than such as involved in this case, not bringing them within the Act, it would have had to specifically say so, because these were not Government employees. They were employees of the Lone Star Corporation. The Government has not yet engaged and did not throughout the war engage in specific manufacturing and processing of munitions or any other articles. The most significant thing which I would call to Your Honor's attention is that during the war 18 bills were introduced in the Congress, all of which attempted to suspend or restrict the coverage of the overtime provisions with reference to war contractors, all of which recognized the applicability of the Act to these ordnance plants and to all other war contractors, because they were

thinking at that time that for the duration of the war we should alleviate all of this industry engaged and not require of them certain restrictions, such as this Act constitutes. And the Congress never passed such an act, but those 18 bills were introduced and, if Your Honor please, there were three bills introduced in the Senate in the 77th Congress, 11 introduced in the House; two in the Senate in the 78th Congress and one in the House, all of which were attempting to remedy what they considered, their authors considered restrictions against war contractors during the war, and all of which recognized the applicability of the Fair Labor Standards Act. Many, many times cost plus fixed fee contractors have been held subject to the Act. Here is another quotation from Bell vs. Porter in connection with that. "No where in the Act is it suggested that Congress intended that transportation by the Government or of Government Goods be treated differently from all other transportation."

Reading further, Section 2. "To prevent the use of channels and instrumentalities of commerce to perpetuate substandard labor conditions are thwarted whether the channels of commerce are occupied by the Government or by others."

Reading from Walling vs. Patton Transportation Company, 134 Federal 2nd, at 939: "No reason appears why contractors for the Government are to be permitted to maintain substandard labor conditions while private contractors are prohibited from so doing, and such view would thwart the clearly defined purpose of the Congress, particularly if applied at a time when all or nearly all major industries are operating under Government contract."

In that connection Waller vs. McGrady Construction Company, if Your Honor please, 156 Federal 2nd, at 932 contains the following: "The argument that it was the Congressional intention to make the Fair Labor Stan-

dards Act inapplicable to work under Government contract must be rejected. No reason appears why contractors for the Government are to be permitted to maintain substandard labor conditions while private contractors are prohibited from so doing, and such view would thwart the clearly defined purpose of the Congress, particularly if applied at a time when all or nearly all major industries are operating under Government contract."

And Bell vs. Porter contains the following language: "On the first point raised it will be enough to say that cost plus fixed fee contractors with the Government engaged in war production are not agents of the Government." And cites the Alabama King and Bozier case, Kerry vs. United States: "And it has been held that the production of goods for interstate transportation by or for the Government is production for commerce within the meaning of the act." That, Your Honor, is Bell vs. Porter, the only writing by any Appellate Court on the question before Your Honor and in which a writ has been denied. That case, and having glanced through Judge Lemly's opinion—I don't know he said anything about the Bell vs. Porter case, but the language is specific. It certainly is controlling in our situation here. The Bell vs. Porter case was an ordnance plant case. There the Government—I am told by some of these gentlemen sitting back here that some of those materials came into the Lone Star Ordnance Corporation—that a tremendous lot of the inflow there was by a truck and a tremendous lot of it was out by truck, where the shells were taken to the proving grounds. However, our position is, if Your Honor please, that it makes no difference so long as there was the interstate movement. With reference to gold shipment or the acts that are applicable to a gold shipment, calling it an administrative act, there might be something to it, but in this instance we can't see that there is anything to the contention. The only thing

that has disturbed me is by saying that we were prosecuting the war and turning this over to the Government. I have looked up Governmental functions. I have read some cases that refer to Governmental functions. Certainly the prosecution of the war is a Governmental function, but there are hundreds of Governmental functions. The engagement in a war that may mean our very destruction is the most important one we can think of, but there is little stronger Governmental function than the one Your Honor occupies now, the administration of justice in our Judiciary. I remember a case I read one time of Governmental function which involved the prosecution of farmers in Mississippi, a Federal Act required the killing of cattle down in Mississippi or through a certain area in the South, and those farmers refused to let the representatives and agents of the Agriculture department come up on their farms, and dip their cattle. They ran them off with courage and there was a conspiracy charge against all of them for violating the governmental function to protect the public health. The governmental functions today are too numerous to talk about, that all activities of the Government may be a function where there is any definition of a purpose or policy. So there is nothing in the Act that describes that Governmental function or there is nothing in the Act which says when title can pass or when title may pass. It doesn't make any difference. What difference does it make about the Government being engaged in this particular enterprise in the prosecution of the war, because at the same time it was engaged in hundreds of other governmental functions, maybe not as important as the prosecution of the war, but all of the goods that were being produced were being produced in commerce and the fact it was a governmental function doesn't excuse the Act unless the Congress indicates it should excuse the Act. It has been pointed out and emphasized that the Government is the ultimate

consumer, and thereby excused under the Act. Well, all we have got to do is to read the Act to ascertain that it just doesn't read that way. The definition of goods in Section 3(i): "Means goods, wares, products, commodities, merchandise or articles or subject of commerce of any character or any part or ingredient thereof, but does not include goods after their delivery into the physical possession of the ultimate consumer thereof, other than the producer, manufacturer or processor thereof." Now, that means—

The Court:

Who do you think these munitions were delivered to and when?

Mr. Coon:

Well, they were delivered to the Government.

The Court:

The Government had title to them, didn't it?

Mr. Coon:

All right. The Government had title to it.

The Court:

Wasn't the Government the ultimate consumer?

Mr. Coon:

Well, was the Government the producer of it? I mean that is the converse of it, if Your Honor please.

The Court:

Well, I want to ask you if in your opinion the Government was the ultimate consumer of it.

Mr. Coon:

Yes, sir. I say the Government was the ultimate consumer of them and that they came into possession of them. "Other than a producer, manufacturer or processor thereof", and by that, if Your Honor please, in 1939, soon after this Act was passed in 1937, there was an administrative rule out of the Department of Labor, said what does that provision mean? And they held that it means that the Act does not intend to subject innocent purchasers who may buy these goods which may have been produced in violation and the ultimate consumer of the goods will not be subjected to prosecution, and that, if Your Honor please, is brought out in numerous decisions by the Court, but the analogy is, if Your Honor please, was the Act intended to excuse the ultimate consumer who was not a producer or to get the producer when he was also the ultimate consumer.

The Court:

Well, who do you think was the producer of these goods?

Mr. Coon:

The Lone Star Corporation, subsidiary of Goodrich Rubber Company, the employer whom we sue, whose employees were producing goods for transportation in commerce.

The Court:

All right.

Mr. Coon:

And this suit is not against the sovereign. The sovereign is not involved in our suit. We have no suit against the United States of America. Our suit is against Goodrich Rubber Company, the gentlemen who anxious-

ly made those affidavits, who they represent over there, and their company is the one to suffer or should suffer for the failure to pay these people under the Act which they contracted with the Government specifically to do, Your Honor. And I would head an analogy that was made by the Department of Labor from the Hazeltine case which these gentlemen read Your Honor. That Hazeltine case was appealed to the Second Circuit and is now pending there. There the ultimate consumer provision was a primary ground for the trial Court there saying the employees are not subject to the Act, and at that time the Department of Labor filed a brief that I now hold in my hand saying that that provision isn't applicable and saying numerous other things agreeing with the Bell vs. Porter case and contending that the Government was not exempt under the Act, but it said with reference to that provision: "Since the only concern of the provision was for the ultimate consumer, it would seem to follow that if an ultimate consumer who is a producer is not exempt",—now, if he was also the producer, if the government itself was the producer, then certainly the government wouldn't be exempt because we would bring the government in. "A producer who is not an ultimate consumer would not be exempt." Now, the Lone Star Corporation was not the ultimate consumer. The Government was the ultimate consumer. The Lone Star Corporation is the producer whom we sue, who is not exempt under any provision of the Act. All of the goods,—certainly there can be no question but what they were transported in commerce. There must be a specific exemption. A specific exemption. If your government is the purchaser of these things, nothing in the Act provides that: The Congress never made a provision to that effect. Here is an analogy made in this brief, if Your Honor please. In Slover vs. Worsham,¹⁴⁰ Federal 2nd, 258, "One company maintained a dock at which it repaired barges owned

by an affiliated company. Employees repairing the barges were considered engaged in the production of goods for commerce, since the Court considered the two companies as one." That is, Your Honor, since they were affiliated or subsidiaries. The ultimate consumer of the barges was also the producer thereof, and the consumer clause did not apply.

The Court:

I get your point on that. I believe we will take about a twenty minute recess. (After recess.) All right. Go ahead, Mr. Coon.

Mr. Coon:

Yes, sir. Further argument with reference to the angle which we were discussing at the conclusion, Your Honor, the exemption to ultimate consumers would not exempt the defendants here, because the defendants here or the defendants here, Lone Star, is not the ultimate consumer. That is, the exemptive effect of the provision 3(i), which exempts the ultimate consumer, and from the Legislative intent and Legislative history before the Act was passed before the Joint Committee of the House, which I will read you shortly, it shouldn't be enlarged other than what the intent of the Congress was at that time. That is, that they intended to exempt a bona fide purchaser from criminal liability because he couldn't know of the production of the goods in violation of the law. Our suit is not against the sovereign, but against the Lone Star Producing Company. It was processing, it was manufacturing, it was the producer. It can claim no exemption under the Act. It was the employer and our plaintiffs were its employees. Further along this line, Hurtz Drive Yourself Station against 159 some employees in repairing trucks owned by their employer were held to be engaged in the production of

goods for commerce because the trucks were used in interstate transportation. Under the holding, if these gentlemen are correct, these employees who were working on these munitions would be working on goods if they were employed by the Government but not if they were employed—Let's see, if I have got this analogy, but not if they were employed by an independent person. I mean a third person. That is, if we were to hold that Lone Star is not a producer, not an employer because the Government was the ultimate consumer and the purchaser of these goods, it would mean that any person who was the ultimate consumer could create a third person as an independent contractor which these parties, which the Lone Star was, and say "I am the ultimate consumer. There is your producer and I am not liable under the Act for any reason. I am the ultimate consumer". And certainly the exemption didn't go that far, and carrying on further, the act specifically makes numerous exemptions. Those exemptions, if Your Honor please, apply to agricultural employees, railroad employees, and there are—it goes on at length. It specifically exempts the Government as an employer by saying government employees are not subject to the Act, either State or Federal. That particular section is no justification, will not excuse them. Now, if Your Honor please, in other words, what they seek to do is to read into the Act an exemption that is not there. The exemption doesn't exist under the act. In discussing that Legislative history the statement was made by James A. Emory, general counsel for the National Association of Manufacturers, before the Joint Committee of the Senate on education and labor with reference to this particular bill in 1937, in which he said that the only purpose was to exempt the ultimate consumer from any criminal liability for any part he might play in the interstate transportation of such unfair goods. Now, if Your Honor please, our suit today is just the

same suit it was when it was filed in September, 1945. By that I mean the sole question before Your Honor today in these law suits is did these employees while engaged in productive work do overtime? If they did, they are entitled to compensation. There is no other fact question. Everything that is set out in the lengthy affidavit as made by the party defendant except a denial wherein they say these parties received their money is not material. There is only one issue. Did these employees engage in productive work overtime? And that is the sole question in the law suits before Your Honor. Mr. George H. Davis also appeared before the Joint Committee with reference to this and he was at that time President of the Chamber of Commerce and he passed on that same interpretation in accord with this brief filed by the Department of Labor in the Hazeltine case.

To say they are attempting to read into the Act an exemption that doesn't exist, I think, is correct, if Your Honor please, but it might be more appropriately said that all of these specific exemptions indicate the certain Congressional intent to make no wider exemption. That is, they granted exemption to agricultural employees and other classifications of employees but they did not grant exemption to employees in this instance, and the only thing is the government as an ultimate consumer or is the contractor with the government where the government is the ultimate consumer, is the purchaser? Is there any reason for taking them out of the Act? Under the Act there can be no reason for it. If Your Honor please, in the Bell vs. Porter case I will read to Your Honor the statement of facts in that case. I believe it has been represented to Your Honor that that company that was operating the Elwood Ordnance Plant, which was engaged in the Bell vs. Porter case in which the Seventh Circuit Court with District Judge Lindley said, "The application to this ordnance plant is certainly under the Act because

we apply commerce in the broadest constitutional intent and there is nothing exempting the Government and if the Congress had intended to exempt the Government, it would have said so". However, as I understood it, it was said that this plant operated some differently from the Lone Star Plant. If it did, we never heard of it and we have had considerable inquiry made in other ordnance plants as to what the employees of this classification were being paid, and I believe the Elwood Ordnance Plant was being operated just as the Lone Star Plant, and I will read Your Honor the statement of facts as quoted in the Circuit Court's opinion. "The defendant operated the Elwood Ordnance Plant, at Elwood, Illinois, where they were engaged in the manufacture of shells, explosives and munitions for the armed forces under a cost plus fixed fee contract with the United States Government. This plant including all buildings and machinery was owned by the Government, but all of it was maintained by the appellants as independent contractors."—That is the Elwood Ordnance Plant, an independent contractor, if Your Honor please. Quoting further: "The government procured, owned and furnished appellants all powder and other component parts used in the manufacture of the munitions. Appellants, however, as consignees, procured certain other materials and supplies used in assembling and loading of the munitions from various consignors without the State of Illinois. Title vested in these appellants at the time of the delivery. Appellants had complete supervision of all employees including the hiring and discharging of all employees and maintaining their own fire department in which appellees were employed as fire fighters. Upon these facts, the Court can conclude that appellees were engaged in interstate commerce within the meaning of the Act."

I believe every allegation of fact in that statement of facts applies to the Lone Star. The Lone Star in one

large area was engaged in making fertilizer. Fertilizer is—well, it is a commercial product. It can't be considered as anything else. The Government was the purchaser of that fertilizer. They were machining and carrying on operations over into Arkansas to a certain machine shop we are advised about, which did a lot of work over there across the line. They were steadily bringing in all types of materials that were used in that operation there by trucks from out of the state consigned to the Lone Star Corporation. With reference to title passing, there is some authority, if Your Honor please, which would throw some light on that as to when the Government got title and whether it has any bearing or not.

Reading further from that opinion: "An attempt to distinguish Walling vs. Hale Gold Mines and Fox vs. Summit King Mines",—two similar cases,—“on the ground that in those cases the title to the goods did not pass to the government until after the interstate transportation would be unfounded. Manifestly it cannot be important that the technical passage of title occurs before delivery to the common carrier instead of when the common carrier makes delivery.” There are numerous cases where parties have sought to absolve themselves from liability by contending there was no title until they received the goods. Under various Federal regulatory acts. And they all hold that title doesn't enter into the picture so far as the determination of transportation is concerned, where the articles are moving in commerce or where it is established they are moving in commerce. So the only question is whether the movement in commerce existed and the great inflow and the great outflow was certainly there. We would like this further observation, if Your Honor please, that this is a matter of great import to us and to our some 2,000 clients. It is a matter that I know means a lot to the defendant in this case. We are convinced of our position and they have sincerely argued

their side of it. We feel that on this motion, it being a matter of great importance, in the event Your Honor in your sound discretion should determine to rule upon the matter at any given time that it might best serve the interests of the parties, and we so suggest, that a hearing be had on the merits in one or several of these cases and a determination be made after a review of the full facts and a complete knowledge of what this situation is, of the soundness of our contention, the real problem involved, and the nature of these cases that we bring. Thank you, Your Honor.

Mr. Atchley:

May it please the Court, I wanted to make a brief rejoinder. I will probably answer counsel in the inverse order. Suggestion has been made here that this motion be not decided until after a full hearing of the facts in this case on the merits. If our position is correct in this motion, if the Court please, then the very object is to prevent, to save the time and expense of assembling a lot of witnesses from all over the country to have a hearing on the question, where by reason of some legal obstacle the plaintiff couldn't recover regardless of whether or not they worked overtime. Of course, we would be at a great disagreement with counsel whether these men worked overtime and didn't receive the money, and the question is—the only question here is whether or not the defendant has presented facts that are undisputed in law before this Court that as a matter of law they can't recover regardless of what their claims might be. That is the position we are taking in this case, if the Court please. As I indicated in my opening argument, there are two reasons why this case should never be tried on its merits, and, one is that there has been no commerce in this case; transportation across state line was all by the government, shipped by the government, title in the govern-

ment, under government bill of lading, marked government property for military use.

The next proposition is that, conceding that there was ever any commerce that this Act—it isn't a question of exempting because the goods have been delivered into the hands of the ultimate consumer. I think Section 213 makes various exemptions from the operation of the Act, but if the Court please, this activity was never included in the Act. It isn't a question of broadening the exemptions, extending the exemptions beyond the Congressional intent, so as to include an activity that was never intended by Congress to be covered by the Act. It is not to include goods after they have been delivered into the hands of the ultimate consumer. Counsel refers to our making fertilizer. I will tell you the kind of fertilizer we make. It was the kind that blew up Texas City, ammonia nitrate. That is the kind of fertilizer they made. Counsel said the sole determination here is did the plaintiffs do overtime work. I would have to disagree with counsel, because this is not a trial on the merits. This is a hearing where we say that because of facts that stand before this Court undisputed, as a matter of law plaintiffs can't recover. There is no coverage in this case, never was any coverage, if the Court please. To say that the Government could go and buy property, the component parts of this ammunition, buy it in its own name wherever it pleased, at prices it wanted to pay, ship it on government bill of lading marked for military use, government property, at government rates; that after it reached this location, a reservation owned exclusively by the government, under the exclusive control of the Ordnance Department, who even had a right to hire and fire an employee, or had the right to refuse the hiring of an employee, not to permit the contractor to hire some employee who proposed to go to work there, who had a right to designate the types and amounts of ammunition.

when it was to be made, the process how it would be made, the government who furnished the bank account against which these checks were paid these men were written; a government who paid no sales tax on anything it bought. I absolutely believe that Judge Dawkins—people have disagreed with him—

The Court:

Didn't your company in all these contracts executed by the government provide that these laws would provide for those employees?

Mr. Atchley:

No, sir. Counsel has had a copy of the contract in their possession since this—since February and I want them to point out where the contractor agreed to comply with the Fair Labor Standards Act and did agree to comply with the Walsh-Healy Act and any other applicable laws, rules and regulations: The Fair Labor Standards Act isn't mentioned in that contract, if the Court please. No place.

The Court:

I had the impression that it did.

Mr. Atchley:

If it does, I can't find it.

The Court:

I thought it mentioned it by reference.

Mr. Atchley:

Mr. Pritchard, here, secretary of the company, tells me it isn't in the contract. Mr. Herbert is here, general manager. He tells me there is no mention of it made in that contract.

Mr. Coon:

In that connection, this provision provides this, if Your Honor please. "Contractor shall compensate laborers and mechanics for all hours worked by them in excess of eight hours in any one calendar day at a rate of not less than one and one half times their basic rate of pay for all hours worked in one calendar day."

Mr. Atchley:

That is the Walsh-Healy Act. That Act also provides that we pay time and a half for seven consecutive days. The Fair Labor Standards Act doesn't provide that regardless of how many hours worked. It is not in the contract, if the Court please. Now, counsel has admitted in this case that the ultimate consumer should not be penalized. Counsel has also admitted that the United States Government is the ultimate consumer of these goods, and under the admissions stated in this record, if the Court please, if plaintiffs are successful in the outcome of this law suit, the ultimate consumer will be penalized to the tune of many million dollars. They are the ultimate consumer. They are the ones that will be penalized. If the Court please, there isn't any distinction in the case we have here and the gold mining case in the United States Circuit Court of Appeals, stating where the employees of a mining company that was engaged in mining operations—among the things they mined was gold. In fact, I believe they were mining gold exclusively, but they sold that gold to the United States mint in San Francisco, California. The gold was destined for interstate commerce. That is, transportation across state line, to mints located in the United States, and the Court held in that case, if the Court please, the Circuit Court of Appeals—

(At this point Reporter missed taking some of Mr. Atchley's argument due to the fact he had to change paper in Stenotype machine.)

The very object of Rule 56 was to prevent a long, tedious and expensive trial when there were facts in the case that there was no dispute about that would render a trial unnecessary. We respectfully submit in conclusion, if the Court please, again—

The Court:

Well, you will admit there is some divergence of view.

Mr. Atchley:

Yes, sir, I do.

The Court:

Some difference of opinion about this situation.

Mr. Atchley:

Yes. I agree that is correct, but I think the greater weight of authority and reason impells the conclusion that Judge Lemly's opinion is right.

The Court:

Understand you are very sympathetic with his opinion. I know that. But, now, where is this instrument that has been purportedly filed, plaintiffs' bill of particulars in this 219 and 183?

Mr. Atchley:

Here they are, if the Court please. The Court will note that he didn't furnish any information in one of them and very little in the other. There is nothing like a substantial compliance with the Court's order.

The Court:

They don't say anything in that. I think I am going to have to add in this first paragraph being insufficient and not furnishing therewith the information required

by the Court's order, and that no further attempt has been made to supply such information to date. I notice that this was filed on the 24th of January, and it is stated in there that if such information should become available, we would supply it. But there has been no attempt and he has had this order and the benefit of the inspection of the records, and I am going to add those words, if you have no objection to it.

Mr. Atchley:

There is no objection to it. Now—

The Court:

I have added these words in there right after the word "order" in the last sentence of the first paragraph: "And that no further effort has been made to this date to comply with said order." All right. You notify him of that addition in those orders. I will get the clerk to send him a copy of it.

Mr. Atchley:

Very well, Your Honor.

The Court:

Now, what is this answer you have filed in this Allen and Little case? Do I understand you all that you are denying that he was employed in an executive or administrative capacity?

Mr. Kennedy:

Yes, Your Honor. That is the intent of that response to the motion for summary judgment in those cases. That is, under Section 3 of the motion. Neither one of those two employees, Allen or Little, was employed in an executive, administrative or professional capacity. We therefore say there is a controverted issue of fact there and under Rule 56 the Court will be authorized—

The Court:

I think that makes a controversy if that is the effect of your denial. I just ruled upon that, upon the impression that there had been no denial of that allegation about them being employed in that capacity.

Mr. Kennedy:

Yes, sir.

The Court:

I am not going to grant these summary judgments in that upon that ground, Mr. Atchley, unless I should grant your motion for summary judgment on the general issue—

Mr. Atchley:

I am not sure I followed Your Honor on that order.

The Court:

Sir?

Mr. Atchley:

I say I didn't understand the Court.

The Court:

I say they make a controversy. I said I indicated the granting of this motion under the impression that there was no controversy about your allegation about them being engaged in an executive or administrative capacity; in view of the fact they controvert it, I am not going to grant it.

Mr. Atchley:

Of course, they hadn't controverted it when you made that statement.

The Court:

I understood they hadn't and I am not going to grant that motion for summary judgment on that ground.

Mr. Atchley:

Would the Court permit me to say just one more thing further? Just check this contract and the provisions that counsel has named over there, the provision of the contract for the construction of this plant and the other provisions of it here on page 16. That is all in the Walsh-Healy Act and so designated in capital letters. That is the only Act referred to by name, and, of course, sets out substantially the same terms as the Fair Labor Standards Act,—sets out substantially the same language as the Walsh-Healy Act.

Mr. Coon:

The Fair Labor Standards Act is the 40 hour a week act.

The Court:

Now, I am not going to rule on this motion for summary judgment today, because I am not entirely clear that you are entitled to it, Mr. Atchley, and I am not entirely clear that you are not entitled to it, but there seems to be a good deal of difference of view in the decisions regarding this question, and I am going to give it a good deal more consideration before I act upon this motion for summary judgment, but, now, in the event it should be denied, I want to know if it is possible to try one or two or possibly three representative law suits here and let the result in those determine the outcome in the others, or see where we are about a trial upon the merits in the event that course should be indicated by my ruling. Now, do you gentlemen know where you are on the fact issues about the different classes of employees out there?

Mr. Atchley:

No, sir. Because in the bill of particulars, if the Court please, there is an allegation about traveling time, waiting time. Now, in the reply to these motions they say they are not claiming that. I don't know what they are doing and in some of these—You take the L. L. Mills case. There is a suit filed here by plaintiff to recover sleeping time when they were working under the platoon system, and the Circuit Court of Appeals has held in three cases that they are not entitled to it and the Supreme Court has denied certiorari.

Mr. Coon:

I think we can make an explanation. At the time the bills of particulars were filed the portal suits appeared to be good, and we set off in a separate item travel time. We put it down separate. We waive and make no contention for it, and in all the negotiations and discussions we have never made a contention for travel time, dressing and waiting time. Our contention is solely on the productive time. That is the only contention we make.

Mr. Atchley:

You mean while they were actually working.

Mr. Coon:

We make no contention for travel time or dressing time, and that is the only time that is outlawed that I can make out.

Mr. Atchley:

I don't know, if the Court please, if the Guards suit, the mechanics suit, the production employees suit and the field electricians suit—there must be 65 different classifications in each one. Each suit has many of these classifications in it I believe, with the exception of the

Mills case; maybe the Caulder case. The Caulder case doesn't have over 20 or 25 different classifications.

Mr. Coon:

The Caulder case just has two, the guards and the field mechanics, as we understand it. There are a few field mechanics. I don't know. I might be considering different classifications from what we know about classifications.

Mr. Atchley:

A man might work as a guard for 30 days and then on another job, and in many instances held as many as eight or nine jobs during the course of his employment. Each one coming up in a different category. It is complicated to me. I don't believe there are fifty men out there that didn't hold as many as two jobs, in two different classifications.

Mr. Coon:

I might mention this. Thee Caulder has got less classifications. If we are going to single out a case, the Caulder case is the first one on the Court's docket there, and we are ready to try that case. We can get ready any time.

Mr. Atchley:

If the Court please, if plaintiffs are only claiming, like Mr. Coon said here, the time they were actually working, there would be no such thing as a representative suit because each man would have to get on the stand and testify how many hours he worked each day before we would know anything about his claim. In other words, if they are only claiming actual productive work and time while they were at work, stringing wire and driving a truck and so forth, then there couldn't be any such

thing as a representative suit. Each man would have to testify as to the time he worked each week and each day, each day each week. I concede I don't see how a representative suit can be tried unless there is some legal question common to a classification..

Mr. Coon:

The Caulder suit is the first one on the docket.

Mr. Atchley:

In the event the Court shall deny the defendant's motion for summary judgment, I presume the Court would want a pre-trial conference to settle these issues.

The Court:

Take this down now. As I understand your statement, Mr. Coon, speaking for all these plaintiffs in these suits that you are making no claim about walking time or dressing time or sleeping time or any other time except the individual man where engaged in actual productive work.

Mr. Coon:

That is correct, sir.

The Court:

All right. Well, that settles that any way. Is there any way by which you can segregate or separate these different law suits so as to embrace a representative class of employees that would cover the whole field of employees by the trial of a specified number of limited law suits and let the others agree to be bound by the outcome in those? Now, you all know the general set up much better than I do. I think you had better confer about that and see if there is anything you can agree upon about that, because if you can, we can at least facili-

tate this business to that extent. In other words, I assume there are different classes of employees represented in these various suits. If we could just try those classes and determine those, why, it ought to be conclusive on all similarly situated, but I don't know about that. I am going to ask you all to discuss it and see what, if anything, you can agree upon. If you can, why, that will help, and if you can't, we will know it. You all discuss that and see if you can agree upon anything. If you can, we will state it in the record.

Mr. Coon:

May I say one more word? There is a limitation on productive work. I mean performance of duties. I don't mean he was necessarily making something. I mean he was engaged and in the performance of his duties as required by productive work.

The Court:

understand that.

Mr. Atchley:

If the Court please, of course, I don't know. I don't know exactly. I am not clear on the plaintiffs' position about that.

The Court:

What he means is the time that he was actually engaged on the job. That is what you mean, isn't it, Mr. Coon?

Mr. Coon:

Yes, sir. Exactly what I mean.

The Court:

Eliminating these frequent periods of walking time, dressing time and sleeping time and all that.

Mr. Coon:

Yes, sir.

The Court:

I think that is clear enough. But you all see what you can do about some agreement about some classes of suits that can be tried as representative.

Mr. Atchley:

If it could be done, if the Court please, I am certainly all for it.

The Court:

See if you can agree on anything about that, and let me know in a few minutes whether you can or can't. Do you have your brief ready on this motion for summary judgment?

Mr. Atchley:

My brief?

The Court:

Yes, sir.

Mr. Atchley:

If the Court please, I think I presented all the authorities I had on it this morning. I have it here in sort of a rough form.

The Court:

Well, can you give me your brief within ten days?

Mr. Atchley:

Yes, sir.

The Court:

Can you do it within five?

Mr. Atchley:

I can give it to you now.

The Court:

All right. And I will give you gentlemen ten days in which to file your reply brief.

Mr. Coon:

Yes, sir.

The Court:

I assume you have all your authorities ready any way, don't you?

Mr. Coon:

Yes, sir, we can get it up.

The Court:

It looks like it is almost impossible to agree on anything about this business of prospective trial.

Mr. Coon:

If Your Honor please, may I say something about that?

The Court:

Yes, sir.

Mr. Coon:

I would like to say that I believe that the defendant is making something big out of this thing that it really isn't. We can't see it as something big. I just got through talking with Tom Caulder, a guard here, Your Honor. I wish these gentlemen would talk to him and get what his testimony is. We are willing to make any sort of an agreement to expedite this thing. Try any sort of classification. Let them pick it out, to dispose of this matter

and get along. I just got through talking with the truck drivers. I would like for these gentlemen to talk with these truck drivers, see what their contention is, what time they weren't paid for. Mr. Caulder is right here. He said under no circumstances could he leave his radio, two way radio. He ate his lunch there every day. The thing is a simple thing. There is no reason for all this to-do. We will try the guard classification or we will try the truck driver classification, but let's get along with it. We will expedite. We want to be all the benefit to the Court we can.

Mr. Atchley:

If the Court please, we haven't talked to these guards. We don't know. Of course, that is the first information I ever had in this law suit that they were claiming time for time spent while they were eating their lunch. In the guard case, I have understood from hearsay that they are basing them on a different theory. By the way, if the Court please, with respect to that brief, Mr. Wheeler tells me we can improve on that a lot, because some of those cases we know what they are, and we have just got them cited, and if the Court will give me five days, I can re-write that and put it up in much more intelligible form.

The Court:

That is just up to you.

Mr. Atchley:

I would like to, if the Court please. That is messy, just an office work sheet. We will have it back in five days and give counsel a copy of it.

Mr. Coon:

I would like to reiterate that we will be pleased for counsel to hear any classification, guards, executives,—

we will have them any place, from 50 up to the 900 in the guard class. We would like for you to meet with them and go over it with them. We will make any kind of disposition you want about it. We say that without reservation.

Mr. Atchley:

If there is any way on earth to shorten this trial, we are for it, so long as it doesn't prejudice the right of the defendant in this case. We are trying this case under the supervision of the Department of Justice. We are trying to do our duty by them. I know from these records—I have spent virtually all my time for nearly two years on these cases. I know their complications. There is hardly any of these people who didn't work in more than one classification. Take a guard. He probably worked in six different job classifications. Try him as a guard. The question comes in my mind what are you going to do with the time he worked as a truck driver; what are you going to do about the time he worked as an electrician, productive department? All those things. I confess I am not smart enough to try out a short cut on the thing. The only thing that I know common to all cases is just the law questions.

Mr. Coon:

Why don't we pick out the classification, try him on his guard time? The truck drivers, try them on the truck drivers' time.

Mr. Atchley:

That is assuming that a guard worked during the entire two year period of time as a guard, and that isn't true with respect to all these guards. We would be paying them when they weren't working.

Mr. Coon:

Here is a gentleman that worked as a guard all the time.

Mr. Atchley:

He is one of the few exceptions.

Mr. Coon:

Most of them—if he worked nine months, we will try the guard time, what their specific duties were and what they did during that time.

Mr. Atchley:

What are you going to do with the rest of the time that they are suing for in this case?

Mr. Coon:

We wouldn't try it in the guard case.

Mr. Atchley:

Where would you try it?

Mr. Coon:

Try it on the time he was working on. There are so many technicalities it is useless to argue about. If the Court could cut it short any, we are anxious to proceed any way the Court suggests.

The Court:

I am at a considerable loss to make any suggestions about a complicated matter like this. I can see a whole lot of complex items in this and difficulties in it, and especially where there are these different classifications involved and different time periods.

Mr. Atchley:

Here, if the Court please, is another fair illustration. Take a truck driver who was allotted a 30 minute lunch period and I understand now they are claiming a lunch period. These men, some of them were allowed 30 minutes. Some of them an hour. Take a truck driver who was allotted a regular 30 minute lunch period at a definitely scheduled time and say today he was out on the road during his lunch period and had to work. There are instances of that kind. We have instances where he was paid for lunch periods and various other things, and how on earth would we ever get credit for the days in which he was paid for the lunch period, assuming they were entitled to recover for the lunch period, without you taking up each individual case and explore what his law suit is? The time he has worked and how many days he got paid for his lunch and how many days he didn't.

Mr. Coon:

This lunch period thing, there is nothing bugaboo about that. Here are some truck drivers back here. They were engaged in hauling material for the line employees. The line employees had a staggered lunch period. Your Honor, Part of them would go off at 1:30 and have their lunch, and come back to work, and part of them would go off at 12:00 and have their lunch and come back at 12:30. The truck drivers were engaged in that supply all that time. They are contending for an overtime compensation based on the fact that every lunch they had, they got it while they were either driving at the wheel or while their truck was being unloaded for a period from four to five minutes. They are not entitled to a 30 minute lunch period, but they are entitled to a compensation lunch time during that period. That was a matter of routine. They are entitled to some period during that time, whatever it may be. It may be ten or five or twelve.

but during that period of time they were not compensated for that time.

Mr. Fritz Newberry (Associate counsel with Mr. Atchley):

Your Honor, in answer to that, I might state that there was nothing stereotyped as to the type of work that the truck drivers performed. There were, I imagine, somewhere around 35 or 40 different types of trucks and different job classifications within the truck drivers themselves. They had different jobs, different duties, different responsibilities. And what would apply to one truck driver wouldn't necessarily apply to another. I think that the plaintiffs' counsel is unduly simplifying a matter that is really very complicated as the records will show. Now, perhaps we can see so many technicalities and difficulties because we are familiar with the records and plaintiffs' counsel has made no effort to inspect them and to appreciate and to understand the problems that arise in our minds, and I believe, as they say in their pleadings, our records speak for themselves and they are more or less true records of what has gone on. I believe if the Judge could see what our time records show, he could appreciate the many problems that we are confronted with and which are in the way of our simplifying this matter.

Mr. Coon:

Do you have any suggestion to make that you think might do anything at all?

Mr. Atchley:

If I had, I would have made it a long time ago. I never was so tired of a piece of litigation in my life. I want to get rid of it as speedily as possible. I do reiterate it is a tremendous responsibility for me. I have had the principal responsibility in this law suit ever since it started.

There is a world of money involved. If I was derelict in my responsibility in this law suit, I would have to live with it always and I don't want to do that. I think Mr. Newberry probably stated the situation, when one sees those records, the enormous amount of the hundreds and hundreds of problems we are faced with in these cases, if there is any man who is smart enough to take those records and figure, devise some short cut of the trial of these law suits on the merits, I would like to hire him, because I haven't been able to figure it out. Mr. Pritchard has worked diligently on it for a year, and we have discussed that hours and hours, hundreds of hours.

Mr. Coon:

I might suggest this, if Your Honor please, I don't believe we can simplify it as Your Honor suggested, but if Your Honor will set down this first case, we will get ready and we will present the proof to you.

The Court:

I don't know. We may not have to try any of them. I would sure like to reach that judgment about them, but we might. I am just trying to devise some way of simplifying the trial of the issues in the event it is necessary to try the cases upon their merits. And I can realize the difficulties, the different job classifications concerned, because it is just a different situation applicable to the individual at varying times. If we could pick out any representative claims and try them, why, I would like to do that, but the trouble about it, it seems to be just an individual proposition applicable to each employee, unless there was some stereotyped form of claim, which I don't see from these varying and conflicting statements, and of course, if it is necessary to take it up and thrash out each individual claim for a two year period, I guess we can do it, but it will take from here on out, as the Negro

says, to do that. I don't know of any suggestion. I can make about it. You gentlemen are familiar with the facts and records. You can't agree upon anything. I don't know anything I can suggest that you agree upon. I tell you one thing, though, as soon as this motion for summary judgment is ruled upon, if it indicates a trial upon the merits, something is going to be done about lining these cases up for trial and trying them. I think though probably it is going to mean the appointment of some Master to devote a year or two taking testimony about these individual claims, because I am not going to neglect the whole business of this district for the consideration of these individual claims and all the testimony relating to those over a two year period. I know that.

Mr. Coon:

In the past history of this sort of case, Your Honor, Mr. Owens has handled a good many and he says the Courts, —although there may be a difference in the amount of overtime and liability so far as each party in a classification is concerned, the trial Courts in the cases he has been in will hear fifteen or twenty, or possibly ten or twelve, and say during this period of time if that condition has existed, it is my opinion that they are allowable and they have been gotten out of the way in that fashion without hearing all of the 2,000 witnesses where the situation becomes routine and where it is known in a classification what the conditions were throughout a certain period of time.

The Court:

Well, if you all can't agree upon anything, I can't suggest anything for you to agree upon. I will just take this on this motion for summary judgment and then you get your briefs within the stated period of time and I will rule on that, and we will see where we are then. That is all I see to do.

Mr. Coon

I might say one other thing. Of course, we believe in our points in this thing. Since there is a controversy about it, if Your Honor should sustain the motion, we hope that it may be proper to sustain it in one case and hold the others in obedience.

The Court:

I will do that. Apply the outcome to that. There is no use having a half a dozen or a dozen appeals when one will satisfy the situation. Certainly, that is the only way I will do that at all.

Filed Aug. 19, 1947.

APPELLANT'S DESIGNATION OF ADDITIONAL CONTENTS OF RECORD.

(Title Omitted.)

To the Clerk of the District Court of the United States,
Eastern District of Texas, Texarkana Division:

Appellant, Roy Creel, subsequent to the filing of the designation of additional contents of record of the Appellee on the 7th day of November, 1947, designates the following additional portion of the record, proceedings and evidence to be contained in the record on appeal in this action:

1. All portions of the Reporter's Transcript of the Pre-trial Conference (stenographically reported) held at Sherman, Texas, May 3, 1946 (filed May 13, 1946) other than that designated by the Appellee;

2. All portions of the Reporter's Transcript of hearing on defendant's Motion for Summary Judgment (steno-graphically reported) held at Sherman, Texas, June 16, 1947 (filed August 19, 1947) other than that designated by the Appellee;

3. Appellants' Motion to extend time for filing of the Transcript of Record;

4. Order of the Court Granting such Motion;

5. Appellant's Designation (this instrument) of Additional Portions of Record.

CLARK, COON, HOLT &
FISHER,

Republic Bank Building,
Dallas, Texas.

LINCOLN, KENNEDY &
GLOVER,

312 P. & M. Building,
Texarkana, Texas.

(Sgd.) By C. M. KENNEDY,
(C. M. Kennedy)
Attorneys for Appellant.

TALLEY & OWEN,
Of Counsel.

Rector Building,
Little Rock, Arkansas

A true copy of the above and foregoing Designation of Additional Contents of Record was served upon the defendant by mailing a true copy thereof to Otto Atchley, one of the attorneys for the defendant, which service was had by depositing the same in an envelope, with sufficient postage affixed, duly addressed to said Otto Atchley, Beck Building, Texarkana, Texas, and depositing the same in the United States Mail at Texarkana, Texas, on this the 18 day of November, A. D. 1947.

(Sgd.) C. M. KENNEDY,

(C. M. Kennedy)

One of the Attorneys for
the Appellants.

Filed Nov. 19, 1947.

CLERK'S CERTIFICATE.

In the District Court of the United States for the Eastern District of Texas, Texarkana Division.

I, RUTH B. HEAD, Clerk of the United States District Court, of the Eastern District of Texas, do hereby certify that the above and foregoing is a true, full, correct and complete supplemental transcript of the Record in Civil Action No. 191, entitled Roy Creel, et al vs. Lone Star Defense Corporation, as fully as the same is called for in the Additional Contents of Record on Appeal.

Witness My Hand and the official seal of said Court at Texarkana, Texas, this the 24th day of November, A. D. 1947.

(Seal)

RUTH B. HEAD,
Clerk.

By LOIS M. GRIFFEN,
(Lois M. Griffen)
Deputy.

[fol. 234] That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of November 2, 1948

No. 12182

ROY CREEL, et al.,

VERSUS

LONE STAR DEFENSE CORPORATION

On this day this cause was called, and, after argument by Otto Atchley, Esq., for appellees, was submitted to the Court.

[fol. 235] OPINION OF THE COURT—Filed January 18, 1949

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH
CIRCUIT

No. 12182

ROY CREEL, et al., Appellants,

VERSUS

LONE STAR DEFENSE CORPORATION, Appellee

Appeal from the District Court of the United States for the
Eastern District of Texas

(January 18, 1949)

Before Holmes, Waller, and Lee, Circuit Judges

HOLMES, Circuit Judge:

This suit was brought by appellants against appellee to recover overtime compensation, liquidated damages, and reasonable attorney's fees, under the Fair Labor Standards Act. In the court below, after issue was joined on the pleadings, the defendant filed a motion for summary judgment,

with supporting affidavits; and a hearing was duly had on [fol. 236] the pleadings, affidavits, and oral statements of counsel, to determine what material facts existed without material controversy and those in good faith controverted. The question on this appeal is whether the uncontradicted facts before the court were sufficient to warrant the inference of fact that appellee was not an independent contractor engaged in commerce.

In the light of the Supreme Court's decisions on the subject,¹ we deem it necessary to write scarcely more than a statement of the uncontradicted facts before the court at the hearing of the appellee's motion for a summary judgment. This motion was submitted upon affidavits filed by the appellee. Each affiant had personal knowledge of the facts sworn to by him, and was able to give competent testimony of the truth thereof. No opposing affidavits were filed by appellants, and no testimony offered in contradiction of the facts set forth in appellee's affidavits. The court interrogated counsel at some length as to what were the genuine issues presented for decision. There were many other pleadings, such as motions to amend, motions to dismiss, motions for bills of particulars and for production of documents, and also a response to the motion for summary judgment; all of which show the value of the pretrial hearing and the summary judgment procedure; but when the sifting process was completed, it was found that there was absolutely no real controversy between the parties as to any specific fact. The uncontradicted facts were as follows:

During World War II, the appellee's plant was an ordnance facility owned and operated by the United States [fol. 237] for the production of munitions to be used in the prosecution of the war. The appellee was retained, and paid a fixed fee, to manage the operation of the plant. The Government paid all expenses of operation, including the cost of all labor and material. The premises upon which the appellants were employed, the tools furnished them by appellee, and the property with which they dealt in such employment, were in their entirety the property of the United States. The title to all parts, explosives, and ma-

¹ Kennedy v. Silas Mason Company, 334 U. S. 249; Murphy v. Reed, 335 U. S. 865.

terials, except an inconsequential amount, was vested in the Government at the point of shipment, subject to army inspection upon arrival at the plant.

The appellee did not ship any finished ammunition from the plant; all such shipments were made by the Ordnance Department on government bills of lading. The appellee at no time had title to the finished products of the plant, or of the component parts of such products, the title thereto at all times being in the United States. The latter furnished and shipped to the appellee ninety to ninety-five per cent of all material and equipment used in operating the plant; the remainder was purchased for the United States by the appellee. A Commanding Officer, appointed by the Chief of Ordnance, was on duty at all times relevant hereto.

The contract in this case provided that the appellee was operating the plant as a Government agency; that changes might be made in the contract by the Government but such changes should not excuse the appellee from proceeding with the prosecution of the work as changed; that the Government should prescribe procedures to be followed by the [fol. 238] contractor in accounting, checking, and auditing functions, and that if in the opinion of the Contracting Officer the number of employees engaged in checking, auditing, and accounting work, was excessive, the appellee should make such reductions in force as the Contracting Officer deemed necessary; that the contractor should at all times use its best efforts in all acts thereunder to protect and subserve the interest of the Government. The appellee paid wages and salaries of employees by checking against a bank account, the funds of which were furnished by the Government and were subject to withdrawal by the Government.

By a change in the contract, the Government was given the right to pay directly to the persons concerned all sums due from the contractor for labor, material, or other charges; by order dated October 12, 1943, the appellee was ordered to rework and renovate certain ammunition, which provision was reaffirmed and incorporated in a supplement to the contract; by order dated April 3, 1944, the terms of which were included in a supplement to the contract, it was provided that appellee should, as directed from time to time by the Contracting Officer, receive, inspect, assort, screen, segregate, load, renovate, recondition, and rehabilitate, any ammunition (including components and containers), even though it was not specifically mentioned in the contract, re-

gardless of its origin, in such quantities as might be directed by the Contracting Officer.

When we compare the record that was before this court in *Kennedy v. Silas Mason Company*, 164 F. (2) 1016, with [fol. 239] the record in the case at bar, we find many material facts that were not in the former record, which show that this appellee was not an independent contractor but an agency of the Government. Among these additional facts are the following: ○

The Government paid the freight on materials shipped to the plant. A Government officer was maintained at the plant who was accountable for all property used in connection with appellee's contract. The Government contracted for electric power, gas, telephone, telegraph, and teletype service at the plant, and paid such bills directly; the appellee acted as Government agent for the purpose of causing official-business messages to be transmitted; the Government approved all wage and salary rates, and required that no key employees or their principal assistants be hired until there had been submitted and approved by the Contracting Officer a statement of the previous salary, proposed salary, qualifications, and experience, of the persons selected for such assignments; and all munitions processed at the plant were processed under direct Government supervision and control; the Government specified the loading process to be used, directed the type and quantity of munitions, the specifications thereof, and the rate of production; inspections were made by the Government during the various steps of their processing; detailed rules and regulations covering methods of production were promulgated by the Government; and appellee was required to comply with such rules and regulations; federal officers and employees were in attendance to report as to compliance. Appellee had no discretion as to the type of ammunition, the quantity [fol. 240] thereof, or the method of process used in its manufacture, and produced no munitions except as required by the Government. On different occasions, the Government transferred production schedules from other ordnance plants to appellee for completion, and in such cases, if the original plant had made contracts for materials and supplies on account of such schedules, the appellee was required to take over such supply contracts and pay the vendors thereof from funds supplied to appellee by the Government. Ap-

pellee was not penalized if the materials processed at the plant did not meet specifications and could not be used. No sales tax was paid by appellee on materials purchased for use at the plant, nor were ad valorem taxes on real or personal property paid to the state or county, and no license or registration fees were paid on motor vehicles used in connection with the operation of the plant.

From the above uncontradicted facts, the court below inferred and found that the appellee was not engaged in the production of goods for commerce, and that the goods in question were munitions of war manufactured by the United States for the purpose of being used by it in the prosecution of the war; and accordingly, as a matter of law, the court entered summary judgment, from which this appeal was taken.

The Supreme Court, in *Kennedy v. Silas Mason Company*, 334 U. S. 249, does not condemn the summary judgment procedure if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. There is a large number of these claims, all arising out of a common state of facts and depending for decision upon the same principles of law. The judicial process may break down under the load if the courts fail to use the new methods of procedure provided by the Federal Rules of Civil Procedure. While it is true that the appellants here denied generally the facts relied on by appellee for a summary judgment, such denial specified no controverted fact that would be admissible in evidence upon a trial on the merits. Rule 56(e) provides the form of supporting and opposing affidavits in the summary judgment procedure, and requires that the affidavits shall set forth such facts as would be admissible in evidence; moreover, the affidavits must show affirmatively that the affiant is competent to testify to the matters therein stated. On motion under this rule, paragraph (d) requires the trial court to ascertain, if practicable, what material facts exist without substantial controversy and what material facts are actually in good faith controverted. The court shall thereupon, the rule says, make an order specifying the facts that appear without substantial controversy; and, upon the trial, the facts so specified shall be deemed established.

Paragraphs II and V(D), set out below in full, contain (so far as applicable here) appellee's response to the mo-

tion for a summary judgment.² The averments do not meet [fol. 242] the requirements for affidavits under Rule 56(c). No witness would be permitted to testify that the appellee operated as an independent contractor and was engaged in the production of goods for commerce, which are the ultimate facts in issue. Those allegations in the pleadings were sufficient to sustain the complaint upon a motion to dismiss for failure to state a claim upon which relief could be granted;³ but in response to a motion for summary judgment, such allegations at best were only a part of the pleadings to be examined by the court under Rule 56(d) of the Federal Rules of Civil Procedure. They presented issues of fact to be determined by the trial court, at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel.⁴ The court below did this, and found as a fact that the appellee was not engaged in the production of goods for commerce within the meaning of the Fair Labor Standards Act, and that the United States was not only the actual producer but the ultimate consumer of the goods in question.⁵ These findings were deduced from the uncontroverted facts; and, if judgment had not been rendered upon the whole case, an order specifying the facts that appeared without substantial controversy would have been required by Rule 56(d); but, since it appeared from the pleadings, affidavits, and statements of

² Paragraph II. "Plaintiffs state that the defendant is engaged in the production of goods for commerce and in acts necessary for the production of goods for commerce at all times pertinent to the complaint filed herein within the meaning of the Fair Labor Standards Act."

³ Paragraph V(D). "That the defendant throughout all times pertinent to this cause operated as an independent contractor upon a cost plus a fixed fee basis and by its contract with the Government of the United States specifically obligated itself to pay plaintiffs the money they seek under this Act."

⁴ Rule 12(b)(6) of Federal Rules of Civil Procedure.

⁵ Rule 56(d) of Federal Rules of Civil Procedure.

⁶ Pages 93, 94, and 95 of the Transcript; but see Rule 52(a), as amended, which provides that findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 56, i. e., motions for summary judgments.

counsel, that there was no genuine issue as to any material fact and that the moving party was entitled to judgment as [fol. 243] a matter of law, the court was required to enter judgment forthwith under subdivision (c) of said rule.⁶

The question before us is not whether the trial court, upon the uncontroverted facts, reasonably might have found that the appellant was operating as an independent contractor in the production of goods for commerce, but whether a fair and impartial tribunal reasonably could have inferred from the uncontroverted facts that the United States was producing munitions for its own use in war, and that the appellee was acting merely as a government agency.

There is no hard-and-fast rule for determining who are independent contractors, but generally the term signifies one who contracts to do a piece of work, according to his own methods, and without being subject to the control of his employer, except as to the result of the work, and who has the right to employ and discharge the workmen independently of such employer and free from any superior authority in the employer to say how the specified work shall be done or what the laborers shall do as it progresses. Ordinarily the question is one of fact, and each case depends on its own facts, no one feature of the relation being determinative, but all being considered together.⁷

With these elementary principles in mind, and without needless repetition, let us summarize the uncontradicted facts upon which the court below based its inference that appellant was not an independent contractor, engaged in [fol. 244] commerce within the meaning of the Fair Labor Standards Act. Such facts are as follows:

The Army and Navy Departments were responsible for the operation of nearly one hundred government-owned giant munition plants, which were the backbone of the nation's armament program. In order fully to utilize the nation's resources and to minimize encroachments upon its industrial structure, the two departments chose to operate these plants through the agency of selected commercial contractors. All of these plants were owned outright by the United States, and all but a few were located upon military

⁶ Rule 56(c) of Federal Rules of Civil Procedure.

⁷ Corpus Juris Secundum, pp. 638 to 641.

reservations. All were engaged solely in war production, the work performed being of a secret, hazardous, and confidential nature.

The normal profit-making factors were lacking in the arrangement between the Government and appellee in this case. The contractor furnished only its managerial ability, qualities, and services, for which it was paid a fixed fee unaffected by risks of financial loss. The Government retained the right to dismiss any employee at the plant whom it deemed incompetent, or whose retention was deemed by it to be not in the public interest; it approved all wage and salary rates; inspected vigilantly the various processes of production, and required compliance with its detailed specifications that covered every phase of the operation. The Government owned the reservation, owned the plant, tools, working material, and the component parts from which the munitions were made or assembled; it took title at the point of origin to all goods and materials used in the operations, shipping them to the plant-site under government bills of lading.

[fol. 245] The appellee was required to comply with detailed rules and regulations, and no key employees or their assistants were permitted to be hired or assigned to service until there had been submitted and approved by the Contracting Officer a statement of the previous salary, proposed salary, qualifications, and experience of the persons selected for such assignments. In a word, all munitions processed at the plant were under the direct supervision and control of the Government, with no discretion given the contractor to produce munitions except as required by Government direction. Add to these established facts the self-evident one that the United States is not engaged in commerce in making munitions to be used by it in waging war, and we have a solid and sufficient basis from which to draw the fair and reasonable inference that the appellee was not an independent contractor and not engaged in commerce within the meaning of the Fair Labor Standards Act.

Other defenses, such as payment and statutes of limitation, are presented by the pleadings, but it is unnecessary to discuss them, because wherever we turn in this case we are confronted with the ultimate fact, established by the finding of the court below, that appellee was not an independent contractor. To ignore this fact would be to dis-

regard Rule 56, which was promulgated by the Supreme Court. A reasonable inference fairly deduced from an uncontroverted fact or number of facts may establish the existence of an ultimate fact that entitles one of the parties to judgment as a matter of law. When this happens, as it did in this case, and summary judgment is sought, Rule 56(c) requires that "judgment shall be rendered forthwith."

[fol. 246] On the other hand, if the judgment were reversed and the cause remanded, the trial court would be required to proceed under Rule 56(d), by specifying the facts that appeared without substantial controversy; and we know what those facts are from the opinion in this record.^{*} Under Rule 52, as amended, findings of fact and conclusions of law are unnecessary on decisions of motions for summary judgment, but under Rule 56(d) the court is required to make an order specifying the facts that appear to be without substantial controversy. Rule 52(a) provides that if an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Thus the court's opinion in this case, while not required under Rule 52(a), might serve the requirements of Rule 56(d), the provisions of which could not be avoided upon another trial. The intention of this rule is to put an end to useless and expensive litigation if there is no genuine issue as to any material fact.

The judgment appealed from is
Affirmed.

^{*} See opinion of the court below, pp. 93, 94, and 95 of the record, which contains findings under Rule 52(a), as amended, sufficient to require the entry of an order under Rule 56(d) specifying the facts that "shall be deemed established" upon the trial.

[fol. 247]

JUDGMENT

Extract from the Minutes of January 18, 1949

No. 12182

ROY CREEL, et al.,

versus

LONE STAR DEFENSE CORPORATION

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed:

It is further ordered and adjudged that the appellants, Roy Creel, and others, and the surety on the appeal bond herein, The Aetna Casualty and Surety Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 251] ORDER DENYING REHEARING

Extract from the Minutes of February 7, 1949

No. 12182

ROY CREEL, et al.,

versus

LONE STAR DEFENSE CORPORATION

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 252] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 252] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 6, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3281)

LIBRARY
SUPREME COURT, U. S.

Vol. II
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 58

ROY CREEL, ET AL., PETITIONERS,

vs.

LONE STAR DEFENSE CORPORATION

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

PETITION FOR CERTIORARI FILED APRIL 21, 1949.

CERTIORARI GRANTED JUNE 6, 1949.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 58

ROY CREEL, ET AL., PETITIONERS,

vs.

LONE STAR DEFENSE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

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[fol. 248]

IN THE SUPREME COURT OF THE UNITED STATES

ROY CREELE, et al., Petitioners,

vs.

LONE STAR DEFENSE CORPORATION, Respondent

Stipulation and Addition to Record—Filed August 10, 1949

Petitioners and respondent in this cause, by their respective attorneys of record, agree and stipulate as follows:

I

That the attached material is a true and correct copy of the original motion of respondent (defendant in the District Court) for summary judgment and the affidavits and exhibits appended to and accompanying said motion, as filed in the District Court of the United States for the Eastern District of Texas.

II

Through inadvertence, said attached motion of respondent for summary judgment and the affidavits and exhibits appended to and as a part thereof (hereinafter called motion) have not been included in the record certified by the Clerk of the United States Court of Appeals for the Fifth Circuit.

[fol. 249]

III

That such motion was granted by the United States District Court, was considered by said United States Court of Appeals in deciding this case there, and formed a part of the judgment of both said courts.

IV

That said motion and the affidavits and Exhibit "A" attached to and forming a part of said motion, is proper to, and shall be included in the transcript of the record in, and for consideration by, the Supreme Court of the United States where this cause is pending on writ of certiorari to the United States Court of Appeals, Fifth Circuit, and shall be printed as a part of such record as Volume II.

V

That Exhibits "B," "C" and "D" accompanying and attached to said motion are not relevant to any issue within the scope of the order of this court granting a writ of certiorari, and should not be a part of said record, and may be omitted therefrom.

VI

That the cost of printing and the supervision of the printing of said motion and its attachments herein agreed to be included in said transcript of record, shall be taxed as a part of the costs in this cause.

Witness our hands this the 23rd day of July, A. D. 1949.

C. M. Kennedy, Kennedy, Levee and Lee, P. & M. Building, Texarkana, Texas, One of the Attorneys of Record for Petitioners, Roy Creel, et al. Otto Atchley, Atchley and Vance, Municipal Building, Texarkana, Texas, One of the Attorneys of Record for Respondent, Lone Star Defense Corporation.

[fols. 250-251] IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF TEXAS, TEXARKANA DIVISION

ROY CREEL, et al.,

vs.

LONE STAR DEFENSE CORPORATION

CLERK'S CERTIFICATE

I, Ruth B. Head, Clerk of the United States District Court in and for the Eastern District of Texas, do hereby certify that the above styled and numbered cause, when pending in this court, bore Civil No. 191, final judgment in which was entered as of October 1, 1947, was appealed to the United States Circuit Court of Appeals, Fifth Circuit, at New Orleans, and in that court bore No. 12,182. The attached is a true and correct copy of Defendant's Motion for Summary Judgment, the affidavits in support of said Motion for Summary Judgment, and Exhibits "A," "B," "C," and "D" attached to and made a part of said Motion for Summary Judgment. The granting of such motion was made the

basis of the Summary Judgment rendered in said cause by this court. When said cause was appealed, the original of said motion, and the attached affidavits and exhibits, by order of this court, was sent to the United States Circuit Court of Appeals, Fifth Circuit, at New Orleans, in lieu of having the same printed, and the same was a part of the record of this cause on appeal to said United States Circuit Court of Appeals, Fifth Circuit. When the mandate was returned from the United States Circuit Court of Appeals, Fifth Circuit, to this court, the original of said Motion for Summary Judgment, and the attached affidavits and exhibits, of which the attached is a true and correct copy, were returned to this court.

To certify all of which witness my hand and seal of office, this the 8th day of August, A. D. 1949.

Ruth B. Head, Clerk of the United States District Court, Eastern District of Texas, by Lois M. Griffen, Deputy. (Seal.)

[fol. 252] [File endorsement omitted.]

[fol. 253] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF TEXAS, TEXARKANA DIVISION

Civil No. 191

ROY CREEL, et al.

vs.

LONE STAR DEFENSE CORPORATION

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—Filed
January 11, 1947

To Said Honorable Court:

The defendant moves the Court as follows:

1

That it enter, pursuant to Rule 56, of the Federal Rules of Civil Procedure, a summary judgment in defendant's favor, dismissing the action on the ground that there is no genuine

controverted issue as to any material fact, and that defendant is entitled to a judgment as a matter of law, because:

(a) Plaintiffs were not engaged in commerce, nor in the production of goods for commerce, within the meaning and intendment of the Fair Labor Standards Act, while they were in the employ of the defendant.

(b) Defendant was not engaged in commerce, nor in the production of goods for commerce, within the meaning and intendment of the Fair Labor Standards Act, during the times plaintiffs were employed by it.

(c) Defendant has paid all plaintiffs all moneys which it owed them, and each of them, for the services performed by them, and each of them, for the defendant, in accordance with their contracts of hire, and all laws, statutes and lawful regulations issued pursuant thereto, as applied to all plaintiffs and their employment with defendant, and the sums of money paid said plaintiffs, each respectively, by defendant, were sums equal to, or greater in amount, and in excess of the sums of money which this defendant would have been required to pay plaintiffs, each respectively, and which they would have been entitled to receive, computed [fol. 254] in accordance with the provisions of the Fair Labor Standards Act, had said Act been applicable to defendant, and plaintiffs' employment with defendant.

2

In the alternative, that the Court, pursuant to Rule 56, of the Federal Rules of Civil Procedure, enter a summary judgment in defendant's favor dismissing the claims of all plaintiffs which are for alleged overtime compensation for services performed by plaintiffs, each respectively, more than two years before the filing of this suit, each respectively, therefor, because such claims, to the extent indicated in this numbered paragraph, are barred by the two year statute of limitation of the State of Texas (Article 5526, R. C. S. of Texas, 1925).

3

That the Court enter, pursuant to Rule 56, of the Federal Rules of Civil Procedure, a summary judgment in defendant's favor, dismissing the action as to the plaintiffs whose names are set forth in Paragraph Numbered 40, of the at-

attached affidavit supporting this motion, which is here referred to and made a part hereof, insofar as their claims are based upon services performed by them, each, respectively, during the period or periods of time set opposite the name of each such plaintiff in said Paragraph 40, because during said period or periods of time, said plaintiffs, each respectively, were employed by defendant in a bona fide executive, administrative or professional capacity, as in said Paragraph 40 indicated, as such terms are defined and delimited by regulations of the Administrator of the Fair Labor Standards Act.

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In the alternative, if the summary judgment is not rendered in defendant's favor upon the whole case, and a trial is necessary, that the Court, at the hearing on this motion, by examining the pleadings and the evidence before it, and by interrogating counsel, ascertain what material facts exist without substantial controversy, and what material facts are actually and in good faith controverted, and thereupon make an order specifying the facts that appear without substantial controversy, and directing such further proceedings in the action as are just.

[fol. 255]

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To support this motion, there is attached hereto an "Affidavit supporting Motion for Summary Judgment."

Otto Atchley, Wheeler & Atchley, 700 Texarkana National Bank Building, Texarkana, Texas, Attorneys for Defendant.

Dated: Jan. 10, 1947.

The above and foregoing Motion for Summary Judgment, and the affidavit and exhibits attached thereto and made a part thereof, were served upon the plaintiffs herein by mailing a true and correct copy thereof to Messrs. Lincoln, Harris & Kennedy, Attorneys of Record for plaintiffs, at their address in Texarkana, Texas, on this the 10 day of Jan., 1947.

Otto Atchley, One of Defendant's Attorneys.

[fol. 256] IN UNITED STATES DISTRICT COURT

[Title omitted].

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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[fol. 259] 1. In June 1941 representatives of the United States Ordnance Department approached The B. F. Goodrich Company of Akron, Ohio, stating that the services of The B. F. Goodrich Company, along with those of other large manufacturing concerns, was essential to the execution of the War Department's plans for national security. The B. F. Goodrich Company was advised that the Government desired to avail itself of the company's key personnel, industrial organization, mass production "know how", and industrial technique, and The B. F. Goodrich Company was requested to undertake the design, construction, equipping,

staffing, and operation of a shell and bomb loading plant to be located near Texarkana, Texas. As a result of the Government's request, Lone Star Defense Corporation was incorporated under the laws of Ohio in the year 1941 for the sole purpose of fulfilling and performing cost-plus-fixed-fee Contract W-ORD-516 DA-W-ORD-3, as amended, which will hereinafter be referred to as the "Contract", which it executed with the United States Government on the 23rd day of July, 1941. A certified copy of Contract W-ORD-516 DA-W-ORD-3, as amended, is attached hereto marked "Exhibit A". Said exhibit consists of the original Contract dated July 23, 1941, Notice of Termination, Supplements Nos. 1, 8, 11, 16, 18, 19, 20 and 21, and Change Orders Nos. 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15 and 17.

2. The Contract provided for Lone Star Defense Corporation to design, construct, and equip and staff a new ordnance facility by furnishing to the Government management services for such designing, constructing, and equipping, by procuring the production equipment to be installed therein, and by subcontracting with third parties for necessary Architect-Engineer Services and for constructing the new ordnance facility and installing the production equipment therein; to train key personnel and to operate said ordnance facility for the loading of fixed rounds, shells, bombs, boosters, fuzes, detonators, artillery primers, and other similar ordnance items.

3. The Government procured the plant site consisting of approximately 22,000 acres located between U. S. Highways 67 and 82 about ten miles west of Texarkana, Texas. The Government-owned plant site was designated by the Government [fol. 260] as the Lone Star Ordnance Plant, which will hereinafter be referred to as the "Plant", and the plant site was officially designated by the Government as a United States Military reservation.

4. In accordance with the provisions of the Contract, Lone Star Defense Corporation entered into subcontracts on subcontract forms prescribed by the Government, with Architect-Engineers and with Constructors and said Constructors, under said subcontracts, actually performed the construction work necessary in building the Plant. The cost of such construction work was paid direct by the Government to the subcontractors.

5. By the terms of the Contract, the title to all materials, tools, machinery, equipment, supplies, and all other property of, upon, located at, and used by the Plant, including all parts, components, explosives and materials from which the defendant assembled ammunition under the Contract, was in the United States Government, and title to all items purchased by the Lone Star Defense Corporation, immediately vested in the Government, at the point of shipment, subject to inspection upon arrival at the Plant.

6. Because the operation of the Plant was vital to the prosecution of the War, and because of the potential hazards to thousands of employees from the huge quantities of explosives which were stored and used at the Plant, it was necessary that extreme precautions be taken to protect the Plant and its various areas from sabotage and unauthorized entry. The entire reservation was protected by a wire fence surrounding it, and each explosive area therein into which the Plant was subdivided, was separately enclosed by a cyclone fence, as specified in Paragraph 8 hereof, all of which fences were patrolled by guards twenty-four hours per day. There were five entrance gates in the outside reservation fence, four of which permitted entry at various points from United States Highway 82 (the north side) and the other permitted entry from United States Highway 67 (the south side). Plant guards were stationed twenty-four hours per day at each reservation fence entrance gate, when open.

7. Because of the possibility of explosions, the Plant was so designed that if an explosion occurred in any building or at any place on the reservation it would not detonate other [fol. 261] explosives. This required that the buildings wherein explosives were stored or handled be located at prescribed distances from each other. These distances were known as "safety distances." The Government determined and prescribed the safety distances and the Plant was designed and constructed in accordance with the Government's schedule of safety distances. The safety distances were dependent upon the quantity of explosives which were to be used or stored in each building. The safety distances account for the large amount of space required by the Plant. There were over 665 separate major buildings at the Plant and a large number of secondary buildings. Lone Star

Defense Corporation restricted the number of employees who were authorized to be present in any building, portion of a building, or other place where explosives were stored or used so that if an explosion did occur, a minimum number of employees would be exposed to injury.

8. The actual loading of shells, bombs, fuzes, detonators, etc., was performed in a group of buildings known as "load lines". Particular load lines were identified as "Area B", "Area C", and "Area E", etc. There were fourteen such load line areas. There were three "igloo" areas and one upground magazine area where explosive materials and finished ammunition were stored. Each load line and each area wherein explosives were used or stored was completely enclosed by cyclone fence which was patrolled by guards twenty-four hours per day. Each employee was provided with credentials and a numbered badge containing his picture which authorized his admittance through the reservation main gates and to his regularly assigned work area or areas. Plant guards were stationed at the gates to each load line or explosive area and admittance thereto was restricted to those employees displaying proper credentials for admittance to the particular area.

9. In the administration area, Area I, there was located the administration building, the central fire station and guard headquarters building, the main plant cafeteria and employees' recreation building, four large dormitories for employees, Area I boiler house, the employment building, a twenty-nine bed hospital building, and the main reservation entrance gate and guard house.

10. The Plant had its own telephone system and private switchboard. To provide the Plant with an adequate supply [fol. 262] of water, there were constructed two dams which created artificial lakes and provided water for the Plant's water treatment plant. There were approximately fifty-two miles of large water mains, twenty-four miles of sewers, and a sewage disposal plant. To provide for the intraplant distribution of materials and access to the work areas, there was a total of approximately one hundred thirty-one miles of bituminous, concrete and gravel roads and highways, all of which were ditched and drained. The Plant also operated its own freight railroad system which consisted of several Diesel locomotives, freight cars, and ap-

proximately forty-three miles of standard gauge railroad track which connected with both the Cotton Belt and Texas and Pacific Railroads.

11. For the transportation of materials, the Plant maintained and used a fleet of approximately 350 trucks and tractors and 100 trailers in addition to several Diesel locomotives and plant owned box cars. To provide for plant supervision, maintenance and repair, guard and fire protection, passenger automobiles and other light vehicles were provided for army officers and officials, executives, engineers, etc., whose work required them to go from their headquarters to various areas during the day.

12. The number of persons that were employed by Lone Star Defense Corporation in operating the Plant varied from time to time depending on the production schedules that were given by the Ordnance Department to Lone Star Defense Corporation. During the last two years of operation of the Plant, prior to V-E Day, the number employed at any particular time varied from approximately seven thousand to ten thousand five hundred employees. Due to labor turnover and men being drafted for the armed services, it is estimated that during the entire period of operation of the Plant, Lone Star Defense Corporation employed from thirty thousand to forty thousand different individuals.

13a. All employees of Lone Star Defense Corporation were hired under an oral agreement of hire for an indefinite period of time and all such employees were subject to termination at any time without advance notice although it was the policy of the company to give advance notice of termination or layoff whenever same was possible. The company did not use or enter into written contracts of hire.

[fol. 263] 13b. All newly hired production and inspection hourly rated employees were given "induction training" by Lone Star Defense Corporation's Training Department. During the course of such training these employees were instructed with reference to the defendant's safety rules, plant policies and procedures, including the procedure for filing a wage adjustment claim for any incorrect payment for time worked. At the conclusion of the induction training, the employees classified as explosive operators and inspectors were told the name of their foreman and change house attendant and the place and time to report for work.

Hourly rated employees, other than explosive operators and inspectors, were transported by the training instructor to their work place and introduced to their foreman who took them in charge.

13c. Newly hired salaried employees were given an induction talk by the training department or foreman and were informed, among other things, as to the Plant's organization, their hours of work, and pay system.

14. The worker assigned to a particular shift in a load line could gain admittance to the reservation in a privately owned conveyance at any time at any of the main reservation gates selected by him, by displaying his employee's badge to the Plant guard stationed at such entrance, and then proceed in his conveyance, by such a route as he might select, to a parking lot which was located adjacent to each load line entrance gate, or if he entered the reservation for some purpose other than going to work immediately, he could proceed to such other parts of the reservation where entrance was not restricted or his presence prohibited. The parking lots adjacent to the various areas were provided free of charge in all areas for the employees' convenience. The employees then proceeded through the area entrance gate to the change house and time clock alley. Lone River Bus Company, a public carrier which operated a fleet of buses transporting members of the public and employees of the defendant, to and from Texarkana and other points along U. S. Highway 82, by permission of the army and the Plant executives, entered the reservation and carried employees to the various areas where such employees were working. The defendant Plant received no part of the fare paid by the employees. At each shift change time these buses would pick up employees at the various areas within the reservation and carry them out of the Plant and [fol. 264] to their final destination. This type of transportation was used by those employees who did not own their own cars or belong to a "share the ride" group. Each employee selected his own method and means of transportation to and from the particular place or area where he worked.

15. Within each load line area there was provided for the employees a "change house" where they could change clothes, wash and bathe, and a "bombproof" wherein the

employees could smoke, eat their lunch, and obtain food from the load line cafeteria which was open to the employees during their lunch periods on all shifts. First Aid rooms, in charge of a registered nurse, were maintained in those load lines where the employee census warranted such service.

16. There were other designated areas at the Plant where explosives were not kept or used. Those areas were not enclosed by an area cyclone fence. Examples of such areas were Area BB, the machine shop, carpenter shop, and equipment area, and Areas D and H where inert materials were stored and warehoused.

17. Employees, who were not regularly assigned to work in the load lines or explosive areas, went to their work area either by their privately owned car, share a ride arrangement, or by riding the public carrier operated bus line. Such employees would not have to pass through a guarded area gate and they could go direct to their regularly assigned time clock alley.

18. During most of the time that the Plant was operated, it was operated twenty-four hours per day, six days per week, on a three shift basis. Eight hours working time constituted the normal shift.

19. With but relatively few exceptions, all hourly rated employees reporting for work at their assigned work areas checked in by passing through a clock alley and ringing a time clock. Most hourly rated employees were employed on work shifts which commenced when the Plant's whistles were sounded at 12:00 midnight (known as first shift), 8:00 o'clock A. M. (Known as second shift), and 4:00 o'clock P. M. (known as third shift), although the shift change time in some departments varied from these hours. Hourly rated employees were permitted to ring the time clock at any time within the fifteen minute period immediately preceding the starting time of the work shift to which they were assigned. Under the "Timekeeping and Payroll Procedure" of the defendant, which was approved or ratified [fol. 265] by the Contracting Officer's Representative, the work time of the employees was considered as commencing with the sounding of the air whistle which announced the start of the work shift. They were not required to ring the time clock at any particular time during said fif-

teen minute period next preceding the beginning of their shift, and no deduction in working time was made unless the time clock ring appearing on the clock card indicated that the employee checked through the clock alley at a time subsequent to the starting time of his work shift. It was necessary to confine the period for ringing the time clock to the fifteen minutes preceding the start of the shift, due to the fact that many employees came to the Plant one or two hours prior to the start of their work shift for their own social purposes, to visit and converse with other employees on the same shift, and unless so prevented, would ring the time clock when they entered the area; such early time clock rings would have caused confusion in computing work time, and permit idle employees of one shift to be in the load line with employees of another shift, causing confusion and interference in the performance of the work by the shift then on duty, and in addition thereto, the idle employees, when added to those on duty, would have exceeded the explosive limits of the number of authorized and permitted employees in the load line work places at one time.

20. The hourly rated employees, unless they were assigned to additional or overtime work, clocked out at the end of their work shift, but were permitted, at their discretion, to clock out at any time within fifteen minutes immediately following the end of their work shift. A total of from thirty to thirty-seven time clocks were provided at the Plant in order to avoid congestion and waiting in the time clock alleys to in-ring or out-ring the time clock.

21. The maximum number of hourly rated employees using the time clocks on any given shift did not exceed approximately three thousand six hundred employees, and on the night shifts, the number of employees using the time clocks was, for the most part, from forty to sixty-seven percent less.

22a. All employees working in the load lines and in most of the company's other departments were given a lunch period of thirty minutes duration. Lunch period time was not considered work time and the employees were not paid for such time. During the lunch period the employees per-[fol. 266] formed no work and were free to use the lunch period time in any manner that they chose. If, due to an emergency, an employee did not receive a lunch period

during his shift, he was compensated for such work time. Hourly rated employees did not in-ring or out-ring a time clock when they took their lunch period. In a few departments where it was impracticable to assign a regular thirty minute lunch period, such employees were permitted to eat their lunch on a "snatch lunch" basis, that is, whenever they had free time to do so, and no deduction of time was made for a lunch period. Only a relatively few employees were employed on the "snatch lunch" basis. Employees on a "snatch lunch" basis were not allowed to leave their work place; all others were.

22b. Salaried employees, who normally worked from 8:15 A. M. to 5:00 P. M., were given a forty-five minute lunch period during which time they performed no work and were free to use such lunch period in any manner they chose.

22c. On September 24, 1943, a work schedule was established for employees in the guard department whereby they received a lunch period of one hour. Due to a reduction in the guard forces it subsequently became necessary to revise the lunch period schedules and to place some of the area guards on a "snatch lunch" basis.

22d. Employees in the fire department received lunch periods, the length of which was changed from time to time in accordance with changed work schedules. From on or about September 6, 1943, until the adoption of the "Two-Platoon System" (a method of operation in the fire department), the fire department employees were on a work schedule which provided for a forty-five minute lunch period. Under the Two-Platoon System the fire department employees received a lunch period of one hour for the noon-day meal and such additional time as they desired for other meals. When the Two-Platoon System method of operation was discontinued and the three shift system reinstated, the fire department employees were given a one hour lunch period.

23. Hourly rated load line employees, who were subject to various safety regulations which required them to change from their ordinary clothes to special work uniforms or shoes, and (at one time) be at their assigned work places when the starting whistle blew, were compensated in full for [fol. 267] all such preparatory time and activities (both

prior and subsequent to the work shift) by a flat allowance of thirty minutes each day worked.

24. Employees, who were paid on a salary basis, were not required to ring time clocks. Such employees reported to their supervisor at their assigned work place and weekly signed a "Salary Employees Weekly Attendance Report" form which set forth, opposite the employee's signature, the number of hours worked each day, together with the total number of hours worked during the work week, and each salaried employee was paid in full, at proper overtime rates, if applicable, for all hours shown on such signed weekly attendance reports.

25. In general, in operating the Plant, the loading of a particular ordnance item was assigned to a particular load line. For instance, Area E load line was designed and equipped to load 105 mm shells. Each load line was so designed to be self sufficient for this purpose so that it was only necessary to deliver the explosives, components, and packing materials to the area and all operations incident to the loading, packing, and shipping of the finished rounds were accomplished in said area. From time to time the machinery and equipment located in various load lines were changed to load various and different ordnance items in accordance with the production schedules given to Lone Star Defense Corporation by the Ordnance Department.

26. Under the Contract, the Government furnished, supplied and caused to be shipped into the Plant, all parts, components, explosives and materials used in the assembly and loading of ammunition, except such small quantities of small metal parts (inconsequential in amount) as the Contracting Officer, from time to time, directed the company to furnish, and under said Contract, the title to such plant purchased material immediately vested in the Government at the point of shipment, subject to army inspection upon arrival at the Plant.

27. Incoming railroad shipments of explosives, components, and materials were delivered by the common carrier inside of the Plant where railroad crews, employees of Lone Star Defense Corporation, hauled the freight cars to the proper area for unloading by using the Plant's Diesel locomotives (which locomotives likewise belonged to the Government). Wherever practicable an effort was made to

[fol. 268] schedule incoming materials so that materials were sent direct to the railroad unloading docks in particular lines for immediate use in the assembly of finished ammunition. Cars of TNT, powder, or other explosives were unloaded directly from cars to trucks and the materials hauled either to a load line or storage igloo.

28. As above stated, each load line was a distinct working establishment complete within itself as a load or assembly line, or factory unit. Buildings located therein were connected by covered ramps and served by roadways, and each of the major caliber load lines was supplied with heat and power by its individual boiler house. One boiler house furnished such power to two or more minor caliber load lines. The major caliber load lines were so designed that incoming materials were delivered to the unloading docks located at the north end of the load line, and as the materials moved from building to building, all work necessary to the loading of the particular item was accomplished so that finished, packed ammunition was shipped from the shipping docks located at the southerly end of the load line. The load lines were also supplied with components and materials which were delivered by trucks from warehouses or igloos where said materials had been temporarily stored.

29a. In the operation of the Plant the Ordnance Department specified the various items which it desired to have loaded and supplied production schedules which set forth the quantities of the various items that it desired loaded each month. The quantities specified in the production schedules were revised by the Ordnance Department from month to month, and it was a frequent and common occurrence that the schedule would be increased or decreased in the month due to the fluidity of the War and the resulting demand for different ordnance items, or for larger or smaller quantities of particular items. During the operation of the Plant, the indicated quantities of the particular ammunition items, as shown in paragraph 29b, were loaded in the Plant's various load lines.

[fol. 269]

29b. Ammunition Description	Total Loaded
500 Lb. Bombs	172,392
250 Lb. Bombs	406,548
100 Lb. Bombs	100,544
23 Lb. Bomb, Cluster	150,717
23 Lb. Bomb, Fragmentation	498,471
20 Lb. Bomb, Cluster (6)	858,580
20 Lb. Bomb, Practice Cluster	14,951
20 Lb. Bomb, Cluster (20)	477,345
155 mm Howitzer Shell	384,943
105 mm Howitzer Semi-Fix	14,260,167
57 mm Armor Piercing	1,499,858
40 mm High Explosive	13,612,580
40 mm Armor Piercing	225,057
37 mm High Explosive	306,650
20 mm Armor Piercing with Tracer	3,855,003
20 mm Ball	2,041,385
20 mm High Explosive, Incendiary	24,472,731
Mk 27 Fuze	21,466,850
No. 253 Fuze	20,864,408
AN-M110 Fuze	18,481,849
Tracer Shell (40 mm)	15,399,740
M102 Booster	482,120
M104 Booster	1,079,471
M38 & Mk 22 Primers	47,884,040
M1B1A2 and M1A2 Primer	15,786,753
M23A2 Primer	9,122,494
Detonator (for 56 Fuze)	3,381,610
Burster M13	497,890
Grenade, Fragmentation, Mk 2	28,325,664
Grenade, Rifle	6,620
Pack Parachute	616,376
T-13 Grenade	65,347
Destruction Kit	150
Practice Grenade	120,025
37 mm Cannister	49,358
Rocket Kit, T-23	767,756
Ammonium Nitrate (in pounds)	18,895,640
Agricultural Grade Ammonium Nitrate (in pounds)	34,450,418
TNT Reclamation (in pounds)	3,088,825
Tritonal Pellets (in pounds)	1,474,582

30a. A total of approximately 216,000,000 pounds of TNT, 55,200,000 pounds of smokeless powder, 8,000,000 pounds of black powder, 1,740,000 pounds of tetryl, and 30,440,000 pounds of ammonium nitrate were used in loading said ammunition.

30b. Approximately 31,700 railroad carloads of finished ammunition were shipped out of the Plant by the Government to its armed forces for their use in the prosecution of World War II.

31. Lone Star Defense Corporation did not sell to the Government (or anyone else) the items and material enumerated in paragraph 29b. As provided in the Contract, the title to all such ammunition and material was at all times vested in the Government and the company was reimbursed for its costs and expenditures and was paid a limited fixed fee, not based on cost for its services in operating [fol. 270] the Plant.

32. Throughout the period of time that the Plant was under construction and operating, the Government stationed at the Plant a Contracting Officer's Representative who, under the provisions of the Contract, exercised full power and authority as the Government's representative. The Government's auditing, accounting, inspection, and other administrative work, incident to and connected with the Contract, was under the direction and control of the Contracting Officer's Representative. The Contracting Officer's Representatives, who were assigned to the Plant, were in each instance commissioned officers of the Army of the United States, who usually held a commissioned rank not lower than Lieutenant Colonel. The Contracting Officer's Representative was also the Commanding Officer of the military reservation. To assist him in the discharge of his duties, the Contracting Officer's Representative had a staff of Commissioned officers of the Army of the United States consisting of Lieutenants, Captains, and Majors. The Contracting Officer's Representative also had under his supervision a large group of civilian employees who were employed by the Government, some of whom were employed as auditors and some as "time checkers", whose duties were, among other things, to ascertain and verify the amount of time reported worked by employees of Lone Star Defense Corporation.

33. The Contract provided that the Contracting Officer could, among other things, at any time after consultation with Lone Star Defense Corporation, make changes in or additions to the drawings and specifications of the work to be performed, issue additional instructions, and require additional work to be performed and direct the omission of work covered by the Contract; require the defendant to dismiss any employee the Contracting Officer deemed incompetent, or whose retention was deemed to be not in the public interest, and the Contract required the defendant to keep at the Plant a duly appointed and qualified representative to receive and execute, on the part of the defendant, such notices, directions, and instructions as were issued by the Contracting Officer under the Contract.

34. The Contract also provided that Lone Star Defense Corporation would only be reimbursed for the costs of the work under the Contract when such costs were approved or ratified by the Contracting Officer. It also required that Lone Star Defense Corporation should furnish to the Contracting Officer, or his Representative, statements of administrative procedure followed by Lone Star Defense Corporation for the direction and control of the work. In compliance with this provision of the Contract, Lone Star Defense Corporation furnished to the Contracting Officer's Representative its written administrative procedures covering purchasing, disbursing, accounting, transportation, storage, employment, housing, sanitation, subsistence, recreation, and other essential activities and methods. In accordance with other provisions of the Contract, the books and records of Lone Star Defense Corporation were open and accessible to the Contracting Officer's Representative for his inspection and audit. As above stated, Lone Star Defense Corporation's written administrative procedures, covering timekeeping, computation of time worked, computation of overtime payments, wage and salary rates, etc., were submitted to the Contracting Officer's Representative who approved or ratified such procedures.

35. Lone Star Defense Corporation's wage and salary payrolls, books, and costs records were continuously audited and inspected by Government auditors and employees under the supervision of the Contracting Officer to verify that such costs and payments were made within the terms of the Contract and in accordance with the procedures above re-

ferred to, and that Lone Star Defense Corporation's employees received the full amount of pay due to them and that no unauthorized deduction was made in their pay. Consequently the Government, through its Contracting Officer, had full and detailed knowledge as to Lone Star Defense Corporation's methods and procedure for computing wages, salaries, and overtime payments, and that such methods and computations were correct and in compliance with all applicable laws.

36. Lone Star Defense Corporation did not "ship" finished ammunition from the Plant. All such shipments were made by the Ordnance Department. The finished ammunition was loaded on common carrier cars by the defendant in accordance with Government shipping instructions but the actual shipment thereof was made by the Ordnance Department on United States Government Bills of Lading.

37. To perform the work under the Contract, Lone Star Defense Corporation established at the Plant an organization headed by its general manager who had general supervision of the company's activities. He was assisted by ten [fol. 272] division superintendents, each of whom headed one of the company's ten organizational divisions. Seven division superintendents reported to the general manager and three reported to the Coordinator of Staff Functions. Each division superintendent supervised the performance of the duties and functions assigned to his particular division. The principal functions of each division is as follows:

Consulting Engineer's Division—under the direction of the Consulting Engineer advises on technical matters, engineering and production; performs functions incident to safety, and screening, renovation and salvage of field service (ARFO) ammunition.

Engineering Division—under the direction of the Chief Engineer performs functions of all phases of engineering and maintenance.

Technical Division—under the direction of the Technical Superintendent performs functions incident to methods of manufacture and inspection.

Ammunition and Auxiliary Loading Division—under the direction of the Superintendent of Ammunition and Auxiliary Loading performs all the functions incident to production, renovation and salvage of ammunition and loaded

components, other than field service (ARFO) ammunition.

Staff Division—under the direction of the Staff Superintendent performs functions incident to planning and scheduling production, printing forms, warehousing, intra-plant transportation, traffic, and salvage of material other than ammunition.

Medical Division—under the direction of the Medical Director performs functions incident to the medical and surgical care of plant industrial cases, the operation of the hospital and first aid stations, and the maintenance of health and sanitary standards.

Accounting and Treasury Division—under the direction of the Controller and Assistant Treasurer performs all functions relating to fiscal matters, auditing and accounting, office service, and plant protection; and as Coordinator of Staff Functions coordinates the functions of the Personnel Division, Purchasing Division, and Assistant Secretary's office.

Personnel Division—under the direction of the Superintendent of Personnel performs functions incident to the employment and training of personnel; the planning of employee transportation, housing, feeding, and publication of the Plant newspaper.

Purchasing Division—under the direction of the Purchasing Agent performs functions incident to procuring supplies, materials, and services; the disposition of salvage and excess property; and the negotiation of purchase order termination settlements.

Assistant Secretary's Office—under the direction of the Assistant Secretary performs functions incident to the administration of the Prime Contract, insurance matters, state and federal reports; coordinates compliance with state and federal laws and regulations.

[fol. 273] 38. Attached hereto as a part hereof, marked "Exhibit B", is an organization chart which graphically sets forth the organization of personnel at the Plant by showing the various levels of exempt job classifications by job title in each division. This plat or chart shows the organization as it existed as of March 1, 1945. The figure in parentheses following the job title indicates the number of persons employed in that capacity on said date. (In a few instances a job shown on the chart was temporarily vacant on said date—and some jobs which had been previously

abolished and discontinued are not shown.) Minor and inconsequential changes were made in the Contractor's organization from time to time, due to changes in production schedules, and the necessity and desirability of changing the organizational set-up within particular divisions, but, as stated in this paragraph, such changes were of no material consequence, and the job title, and its consequent exempt classifications, remained the same, regardless of the particular division or department to which such job classification was assigned. The attached organization chart sets forth only exempt job classifications. It does not show the names or job titles of the non-exempt hourly rated and non-exempt salaried job classifications.

39. To supplement the description of the physical layout of the Plant and to give a better understanding of same, there is attached hereto as a part hereof a plat marked "Exhibit C" which shows the various plant areas, and "Exhibit D" which shows the layout of Area E load line which load line is typical of the other major caliber load lines.

40. Without prejudice to, or waiver of, the defense of non-coverage and non-applicability of the Fair Labor Standards Act to the operations conducted by Lone Star Defense Corporation, there is listed below a list of plaintiffs and intervenors in this action who were employed as "exempt" employees as said term is defined and delimited by the Official Regulations of the Administrator under the Fair Labor Standards Act. This compilation lists the job classification by job title together with a job description, which, in a general way only, briefly sets forth the principal duties, functions, and responsibilities discharged by the job holder in each listed job classification. The period of time each exempt plaintiff and intervenor was employed in each exempt job classification is also shown under the subdivisions of this paragraph:

[fol. 274]

Job Title and Job Description	Names of Plaintiffs and Intervenors	Period from to
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i. *Area Warehouse Foreman (x)*—Supervises directly, and through warehouse foremen, a group of workmen, checkers, and clerks in all buildings within a storage area. Assigned to one shift, but directs operation of all shifts in

a storage area. Interprets written or verbal orders and passes them on to warehouse foremen on other shifts. Determines procedure of work, assigns duties, and inspects the work to see that it is properly done. This includes proper storage, quantity, safety, and maintenance of harmony among workers. Involves supervision of receiving and disbursement in the area and other critical references. Must possess a detailed knowledge of work involved.

Lige W. Pettigrew 12-11-44 8-6-45

ii. *Building Foreman (x)*—1. Supervises all production of ammunition or components and production personnel in a building. 2. Is responsible for the attainment of production schedules in a building. 3. Promotes and supervises safety, good workmanship, efficiency and cleanliness in a building.

Green E. Williams 6-29-42 2-7-44

iii. *Chief Scheduler (x)*—Supervises a group of schedulers to see that the work done under the scheduler job description is properly performed. Makes special investigations of difficult scheduling problems. Controls scheduling activities for several producing departments.

M. L. Collins 10-9-44 8-23-45

iv. *Foreman, Truck Dispatchers (x)*—Supervises over a period of a shift truck dispatchers, truck drivers, and tractor trailer drivers, and fork lift truck operators. Interprets written or verbal orders, determines procedure of work, and inspects the work to see that it is properly done. Must possess a detailed knowledge of work involved.

B. J. Reed 7-17-44 8-6-45

Ruel L. Jansen 4-9-45 4-28-45

v. *Group Leader-Porter Service (x)*—Direct supervision of employees engaged in the cleaning operations covered under the general foreman job description.

Jeffie G. Thomas 4-10-44 8-31-45

[fol. 275]

Job Title and Job Description	Names of Plaintiffs and Intervenor	Period from to
vi. <i>Inspection Supervisor (x)</i> —Direct supervision of hourly rate inspectors, handling contact with the workers. Sees that data and records covering the inspection are properly compiled, and handles details of proper payroll and time allocation of the individual inspector. The work of the inspection supervisor is usually limited to a single building on a single shift within a load line area.	Green E. Williams	7-24-44 9-25-44

vii. *Safety Inspector (y)*—Determines that employees are complying with safety rules, regulations and practices and that manufacturing procedures being used permit safe operations. This function is extremely important in the shell loading business where employees are constantly handling high explosives and the safety of the entire plant depends upon compliance with safety rules, regulations, and practices. Advises production supervision after determining that safety rules and regulations are being violated. Also determines if practices are unsafe even though not covered by safety rules and regulations. Suspends production activities when extremely unsafe acts or practices are found.

Herbert A. Power	1-25-43 2-20-43
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viii. *Shipping Foreman (x)*—Supervises during a shift the shippers, workmen, and clerks engaged in the loading of ammunition and other materials into cars or common carrier trucks. Directs the assembling and shipping of finished ammunition and inert materials to various destinations, keeping detailed records of all such shipments. Supervises the loading and dunnaging of freight cars according to I.C.C. regulations. Assigns duties to employees and inspects their work to see that it is properly performed, as to quality, quantity, and safety. Must possess a detailed knowledge of work involved.

Edgar L. Goodroe	8-14-44 6-9-45
E. W. Sexton	9-20-43 6-25-45

[fol. 276]

Job Title and
Job DescriptionNames of Plaintiffs
and IntervenorsPeriod
from to

ix. *Sub-Foreman (x)*—1. Supervises all production of ammunition or components and production personnel in a part of a building. 2. Is responsible for the attainment of production schedules in a part of a building. 3. Promotes and supervises safety, good workmanship, efficiency and cleanliness in a part of a building.

Edwin R. Gossett

11-6-44

12-4-44

Lovie H. White

11-6-44

1-1-45

x. *Truck Dispatcher (y)*—Directs the movement of motor trucks and tractor trailers and lift fork trucks throughout the plant and determines assignment of employees to equipment and to job. Assigns drivers to special or emergency trips. Schedules and assigns work of the drivers throughout the shift. May check the condition of equipment and may inspect and determine that the work is being done properly from a quality and safety viewpoint. May instruct some of the workers.

B. J. Reed

6-21-43

7-17-44

xi. *Warehouse Foreman (x)*—A. Supervises checkers, workmen, and clerks in all buildings within a storage area over a period of one shift. Interprets written or verbal orders, determines procedure of work, assigns duties, and inspects the work to see that it is properly done. This includes proper storage, quantity, safety. Must possess a detailed knowledge of the work required.

[fol. 277] B. Supervises employees sorting and baling paper and cardboard. Supervises small group of common laborers engaged in receiving, cleaning, inspecting and reconditioning of salvage materials.

Lige W. Pettigrew

10-16-44

12-11-44

8-6-45

8-29-45

41. The job titles hereinabove referred to in the subdivisions of paragraph 40, which are marked with the letter "(x)", were classified by the defendant as "executive" as the employees were employed in a bona fide "executive capacity" as the term is used in Section 13 (a) (1) of the

Fair Labor Standards Act and as defined and delimited by the Administrator of said Act under Official Regulation 541.1, and each job classification thus marked was held by said employee (or employees) whose primary duty consisted of the management of the establishment in which he was employed or customarily recognized department or subdivision thereof, and who customarily and regularly directed the work of other employees therein, and whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees were given particular weight, and who customarily and regularly exercised discretionary powers, and who was compensated for his services on a salary basis at not less than \$30.00 per week (exclusive of board, lodging, or other facilities), and whose hours of work of the same nature as that performed by non-exempt employees did not exceed twenty percent of the number of hours worked in the work week by the non-exempt employees.

[fol. 278] 42. The job titles hereinabove referred to in the subdivisions of paragraph 40, which are marked and identified by the letter "(y)", were jobs held by employees employed in a bona fide "administrative capacity" as such term is used in Section 13 (a) (1) of the Fair Labor Standards Act and the definition of said term by the Administrator of said Act as contained in Official Regulation 541.2 and each job classification thus marked was held by said employee (or employees) who was compensated for his services on a salary basis at a rate of not less than \$200.00 per month (exclusive of board, lodging, or other facilities); who regularly and directly assisted an employee or employees employed in a bona fide executive or administrative position (as such terms are defined by the Administrator of the Fair Labor Standards Act) where such assistance was nonmanual in nature and required the exercise of discretion and independent judgment, or who performed under only general supervision, responsible nonmanual office or field work, directly related to management policies, or general business operations, along specialized technical lines requiring special training, experience, or knowledge, and which required the exercise of discretion and independent judgment; or whose work involved the execution under only general supervision of special nonmanual assignments and tasks directly related to management policies, or general business

operation involving the exercise of discretion and independent judgment; or who were engaged in transporting goods or passengers for hire and who performed, under only general supervision, responsible outside work of a specialized or technical nature requiring special training, experience, or knowledge, and whose duties required the exercise of discretion and independent judgment.

43. The job titles hereinabove referred to in the subdivisions of paragraph 40 that are marked "(z)" designate employees employed in a bona fide "professional capacity" as that term is used in Section 13 (a) (1) of the Fair Labor Standards Act and as defined and delimited by the Administrator of said Act under Official Regulation 541.3 and designates employees who were engaged in work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, and required the consistent exercise of discretion and judgment in its performance, and work of such character that the output produced or the result accomplished could not be standardized in relation to a given period of time, and whose hours [fol. 279] of work of the same nature as that performed by non-exempt employees did not exceed twenty percent of the hours worked in the work week by the nonexempt employees; provided that where such nonprofessional work was an essential part of and necessarily incident to work of a professional nature, such essential and incidental work was not counted as non-exempt work; and requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or which work was predominantly original and creative in character in a recognized field of artistic endeavor as opposed to work which could be produced by a person endowed by general manual or intellectual ability or training and the result of which depended on the invention, imagination or talent of the employee, and who was compensated for his or her services on a salary basis at a rate of not less than \$200.00 per month (exclusive of board, lodging, or other facilities).

The above named plaintiffs and intervenors are referred to as exempt under only one of the executive, administra-

tive, and professional exemptions, but the powers, duties, and responsibilities of, and the nature of the services performed by many of said plaintiffs and intervenors were such that they, or many of them, are exempt under one or more of such three exempt classifications.

44. The loading of ammunition was commenced at the Plant when the construction work and installation of machinery was completed in each particular area. Area G was the first load line to be completed and equipped and it was placed in operation loading ammunition on or about May 26, 1942. The other load line areas that were operated were placed in operation subsequent to said date. With the exception of Area A which was closed down on Oct. 24, 1945, loading operations in all load line areas were terminated on or prior to August 16, 1945.

45. The "work week" of the defendant's employees consisted of the period of time commencing Sunday at 12:00 P. M. (midnight) and ending Sunday at 12:00 P. M. (midnight) of the following week, except as to the employees working in the Fire Department from August 28, 1944, to August 26, 1945, during which last mentioned period of time [fol. 280] the work week of the employees working in the Fire Department consisted of the period of time starting at 8:00 A. M. Monday, and ending at 8:00 A. M. Monday of the following week.

46. To comply with the provisions of the Contract and to provide a uniform system of accounting, timekeeping, and wage computation, the company adopted and inaugurated a "Timekeeping and Wage Payroll Procedure" which procedure was approved or ratified by the Government's Contracting Officers who were stationed at the Plant. Under this procedure, with but few exceptions, all hourly rated employees were required to punch a time clock as hereinabove stated; but the time clock cards were not, under said procedure, the official records or basis for the calculation and computation of time worked by, and wages due, such hourly rated employees. The controlling, official record from which the calculation and computation of time worked and wages due was the employee's "Labor Distribution Card". The Labor Distribution Card was distributed to the employee's immediate salaried supervisor or foreman who daily entered on said card, in the proper space provided

for thereon, the number of hours, or fractions thereof, worked by such wage employee in each day of the work week. At the end of each work shift the Labor Distribution Card and the time clock card of each wage employee was picked up by the area time clerk for the purpose of inspecting same, noting discrepancies between the two, to ascertain that the hours reported worked on the Labor Distribution Card were supported by proper in-rings and out-rings on the time clock card, and to extend on each card the total number of hours worked on said day. At the end of each work week the Labor Distribution Cards and time clock cards were forwarded to the Central Timekeeping Department. The Central Timekeeping Department, after first making a similar audit, then calculated the employee's weekly earnings, at regular and overtime rates, using the hours shown worked on the employee's Labor Distribution Card.

The use of the time clocks and time clock cards was requested and required by the Ordnance Department so that Government auditors and "time checkers" could verify by audit and investigation to the extent considered necessary (which audit and investigation were made daily) that said employees were actually at their work area and working during the time for which wages were paid, and also to guard against the possibility that an employee might be [fol. 281] paid for a greater number of hours than he actually worked. Thus the time clock card served mainly as an attendance report and as a double check on the Labor Distribution Card which was the official time record. An illustration may serve to make the matter more understandable. For example, assume that on the day of January 3, 1944, John Doe was assigned to, and working the second shift (from 8:00 A. M. to 4:00 P. M.) and that his clock card showed an in-ring at 8:24 A. M. and an out-ring at 4:00 P. M. and that the foreman's entry on the Labor Distribution Card was for eight full hours as time worked on this particular day. When the Labor Distribution Card and time clock card were examined by the area time clerk, the discrepancy of three-tenths of an hour would be noted. If the discrepancy could not be satisfactorily cleared up at that time by the area time clerk, the area time clerk made out a "Clock Card Discrepancy Report", in duplicate, one copy of which was forwarded to the employee's foreman and one copy forwarded to the Central Timekeeping office. Thus the clock card in this instance served as a device to prevent

payment for three-tenths of one hour which the foreman had mistakenly shown as being worked on the Labor Distribution Card as there was not eight hours elapsed time between the employee's in-ring and out-ring.

The company provided a "Wage Adjustment" form for the use of any employee who felt that he had not received proper compensation for the hours which he claimed he had worked during any work week. All employees were instructed about this form; its purpose and its uses. This form was used in connection with the Clock Card Discrepancy Report and some of the common, typical situations which called for its use arose where the employee did not conform to defendant's regulations with respect to ringing the time clock; such as, forgetting or omitting to in-ring when reporting for work, forgetting or omitting to out-ring at the end of the shift, ringing another employee's card through error or mistake, making improper ring through carelessness in inserting the card in the time clock, alleged failure of the time clock to function, and other similar situations. In such instances, unless the area time clerk had been able to successfully clear up the discrepancy between the time clock card and the Labor Distribution Card, the employee would not be paid for the hours claimed worked for that particular day unless and until he filed his claim for [fol. 282] wage adjustment on the provided form briefly setting forth the basis of his claim and the time actually worked. If the employee's foreman, after investigation of the employee's claim, certified that the employee did work the hours claimed on the particular day, or days, the Central Timekeeping office then allowed the employee's wage claim and issued a supplemental check to the employee for the hours worked on the particular day, or days, including any additional overtime to which he might be entitled during the particular work week.

Each week a Labor Distribution Card was prepared for each and every hourly rated plaintiff and intervenor in this case and a daily entry was entered thereon for the hours worked each day that he worked for the company, in accordance with the latter's official Timekeeping and Payroll Procedure. Each of them was paid at their regular rate for the first forty hours worked during any work week and at not less than time and one-half for all hours worked in excess of forty hours during each and every work week, as shown by such Labor Distribution Card, and in every instance, where

a plaintiff or intervener filed claim for wage adjustment, as shown in the next preceding paragraph, the defendant has given due consideration to such claims, and the proof or evidence in support thereof, and has paid each such claim for wage adjustment which had reasonable support and foundation in fact.

47. Concurrently with the surrender of Japan, the loading of ammunition at the Plant was discontinued on or about August 15, 1945. The Government's instructions to the defendant to stop loading operations was confirmed by Change Order No. 17 to the Contract. By letter dated October 18, 1945, the Government gave notice of its termination of the work under the Contract effective as of midnight October 26, 1945, and at midnight November 4, 1945, the defendant returned the Plant back into the custody and possession of the Government who assumed sole responsibility therefor. Both the hourly rated and non-exempt salaried plaintiffs and interveners herein had full knowledge of the defendant's highly publicized wage adjustment procedure. In fact, many of said plaintiffs and intervenors did file and were granted wage adjustments. Although the alleged claims allegedly arose and accrued several years prior to the [fol. 283] institution of this suit, the plaintiffs and intervenors did not file a wage adjustment claim nor make a claim against the defendant for the claims herein asserted nor did the exempt salaried plaintiffs and intervenors make a claim for the additional overtime compensation herein claimed until after the termination of hostilities with Japan and loading activities at the Plant had been discontinued and practically all of the defendant's employees, including most of the plaintiffs, and administrative personnel had been terminated.

[fol. 284] STATE OF TEXAS,

County of Tarrant:

Before Me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared John T. Murchison, who being first duly sworn, states on oath that during the period of time hereinafter referred to he was a commissioned officer of the Army of the United States, holding the rank of Lieutenant Colonel in the Ordnance Department; that on September 4, 1944, he was duly and regularly appointed as the authorized repre-

representative of the Ordnance Contracting Officer for the administration of the Ordnance Factory project near Texarkana, Texas, designated as the Lone Star Ordnance Plant, and that he continued to act as said representative of the Ordnance Contracting Officer until the 29th day of January, 1946; that he has personal knowledge of the facts stated in Paragraphs 3, 5, 6, 26, 29a, 31, 32, 33, 34, 35, 36, and 47 of the above and foregoing "Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs, and the exhibits referred to therein, are true and correct, and that he is able to give competent testimony as to the truth thereof.

John T. Murchison.

Subscribed and Sworn to before me by John T. Murchison this the 3d day of January, 1947, to certify which witness my hand and seal of office. Ottie Lyon, Notary Public in and for Tarrant County, Texas. My Commission Expires June 1, 1947. (Seal.)

[fol. 285] STATE OF TEXAS,
County of Bowie:

Before Me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared Wm. M. Bailey, who being first duly sworn, states on oath that he is a Civil Service employee of the Government of the United States, and that he was employed by the Ordnance Department in the capacity of Ordnance Department Field Auditor and was stationed at Lone Star Ordnance Plant; that he has personal knowledge of the facts stated in Paragraphs 19, 20, 24, 35, 45, and 46 of the above and foregoing "Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs, and the exhibits referred to therein, are true and correct, and that he is able to give competent testimony as to the truth thereof.

Wm. M. Bailey.

Subscribed and Sworn to before me by Wm. M. Bailey this the 31 day of December, 1946, to certify which witness my hand and seal of office. B. P. Rothermel, Notary Public in and for Bowie County, Texas. My Commission Expires June 1, 1947. (Seal.)

[fol. 286] STATE OF OHIO,
County of Summit:

Before Me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared A. Kelly, who being first duly sworn, states on oath that he was employed by Lone Star Defense Corporation in the capacity of General Manager from the 22nd day of July, 1941, to the 5th day of April, 1943, and that on the 5th day of April, 1943, he was elected a Vice-President of said corporation and still holds said office; that he has personal knowledge of the facts stated in Paragraphs 1, 7, 8, 9, 10, 39, and 44 of the above and foregoing "Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs, and the exhibits referred to therein, are true and correct, and that he is able to give competent testimony as to the truth thereof.

A. Kelly.

Subscribed and Sworn to before me by A. Kelly this the 27th day of December, 1946, to certify which witness my hand and seal of office. Rosemary MacGregor, Notary Public in and for Summit County, Ohio. My commission expires August 1, 1948.
(Seal.)

[fol. 287] STATE OF ALABAMA,
County of Tuscaloosa:

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared J. C. Herbert, who being first duly sworn, states on oath that from the 22nd day of July, 1941, to the present time he has been variously employed by the Lone Star Defense Corporation in the capacities of Assistant Secretary, Assistant General Manager, and General Manager; that he has personal knowledge of the facts stated in Paragraphs 3, 4, 6, 8, 9, 11, 13b, 13c, 14, 15, 16, 17, 24, 25, 26, 27, 28, 29a, 29b, 30a, 30b, 32, 33, 36, subdivisions i, ii, iii, iv, viii, ix, x, and xi of 40, 41, 42, 43, 44, and 47 of the above and foregoing "Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs, and the exhibits

referred to therein, are true and correct, and that he is able to give competent testimony as to the truth thereof.

J. C. Herbert.

Subscribed and Sworn to before me by J. C. Herbert this the 27th day of December, 1946, to certify which witness my hand and seal of office. Dorothy S. McGee, Notary Public in and for Tuscaloosa County, Alabama. (Seal.)

[fol. 288] STATE OF TEXAS,

County of Bowie:

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared K. M. Prichard, who being first duly sworn, states on oath that he was employed by Lone Star Defense Corporation in the capacity of Assistant Secretary of the corporation on the 3rd day of June, 1943, and still holds said office; that he has personal knowledge of the facts stated in Paragraphs 2, 5, 11, 18, 31, 33, 34, 36, 37, 38, 40 and its subdivisions, 41, 42, 43, 45, and 47 of the above and foregoing "Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs, and the exhibits referred to therein, are true and correct, and that he is able to give competent testimony as to the truth hereof.

K. M. Prichard.

Subscribed and Sworn to before me by K. M. Prichard this the 30 day of December, 1946, to certify which witness my hand and seal of office. B. P. Rothermel, Notary Public in and for Bowie County, Texas. My commission expires June 1, 1947. (Seal.)

[fol. 289] STATE OF OHIO,

County of Summit:

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared K. R. Huffman, who being first duly sworn, states on oath that he was employed by Lone Star Defense Corporation in the capacity of Controller and Assistant Treasurer on the 22nd day of July, 1941, and still holds said offices; that he has personal knowledge of the facts stated in Paragraphs 12, 13a, 13c, 14, 15, 17, 18, 19, 20, 21, 22a, 22b, 22c,

22d, 23, 24, 26, 27, 29a, 29b 30a 30b, 31, 34, 35, 36, 40, 41, 42, 43, 45, and 46 of the above and foregoing "Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs, and the exhibits referred to therein, are true and correct, and that he is able to give competent testimony as to the truth thereof.

K. R. Huffman.

Subscribed and Sworn to before me by K. R. Huffman this the 27 day of December, 1946, to certify which witness my hands and seal of office. R. MacGregor, Notary Public in and for Summit County, Ohio. My commission expires August 1, 1948. (Seal.)

[fol. 290] STATE OF MISSOURI,
County of Jackson:

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared R. W. Ells, who being first duly sworn, states on oath that he was employed by Lone Star Defense Corporation in the capacity of Superintendent of Personnel from the 3rd day of July, 1944, to the 16th day of October, 1945; and that he has personal knowledge of the facts stated in Paragraphs 12, 13a, 13b, 13c, 22a, 22b, and 40 of the above and foregoing "Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs, and the exhibits referred to therein, are true and correct, and that he is able to give competent testimony as to the truth thereof.

R. W. Ells.

Subscribed and Sworn to before me by R. W. Ells this the 26th day of Dec., 1946, to certify which witness my hand and seal of office. Vera Lucille Outwater, Notary Public in and for Jackson County, Missouri. My Com. Exps. Jan. 21, 1947. (Seal.)

[fol. 291] STATE OF OHIO,
County of Summit:

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared A. C. Sprague, who being first duly sworn, states on oath that he was employed by Lone Star Defense Corpora-

tion in the capacity of Superintendent of Personnel from the 1st day of August, 1941, to the 2nd day of January, 1944; that he has personal knowledge of the facts stated in Paragraphs 13a, 22a, 22b, 22c, and 23 of the above and foregoing "Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs, and the exhibits referred to therein, are true and correct, and that he is able to give competent testimony as to the truth thereof.

A. C. Sprague.

Subscribed and Sworn to before me by A. C. Sprague this the 30th day of Dec., 1946, to certify which witness my hand and seal of office. Alberta M. Tewers, Notary Public in and for Summit County, Ohio. My commission expires November 15, 1947. (Seal.)

[fol. 292] STATE OF OHIO,
County of Summit:

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared C. E. Jones, who being first duly sworn, states on oath that he was employed by Lone Star Defense Corporation in the capacity of Chief Engineer from the 16th day of August, 1941, to the 11th day of November, 1945; that he has personal knowledge of the facts stated in Paragraphs 10, 16, and subdivision v of 40 of the above and foregoing "Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs, and the exhibits referred to therein, are true and correct, and that he is able to give competent testimony as to the truth thereof.

C. E. Jones.

Subscribed and Sworn to before me by C. E. Jones this the 27th day of Dec. 1946, to certify which witness my hand and seal of Office. R. MacGregor, Notary Public in and for Summit County, Ohio. My commission expires August 1, 1948. (Seal.)

[fol. 293] STATE OF OHIO,
County of Summit:

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, on this day personally appeared L. M. Freeman, who being first duly sworn, states

on oath that he was employed by Lone Star Defense Corporation in the capacity of Technical Superintendent from the 16th day of September, 1941, to the 11th day of November, 1945; that he has personal knowledge of the facts stated in Paragraphs 40-vi and 40-vii of the above and foregoing "Affidavit in Support of Motion for Summary Judgment"; that the facts stated in said paragraphs, and the exhibits referred to therein, are true and correct, and that he is able to give competent testimony as to the truth thereof.

L. M. Freeman.

Subscribed and Sworn to before me by L. M. Freeman this the 27th day of December, 1946, to certify which witness my hand and seal of office. Rosemary MacGregor, Notary Public in and for Summit County, Ohio. My commission expires August 1, 1948.
(Seal.)

[fol. 294] EXHIBIT "A" TO AFFIDAVIT

Contract No. W-ORD-516. DA-W-ORD-3

Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

War Department

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Contract for: Furnishing management service (including subcontracts for architect-engineer services and construction of a new ordnance facility and installation of equipment therein), procuring production equipment, training key personnel for and operating a new ordnance facility for the loading of fixed rounds, shells, bombs, boosters, fuzes, detonators, and artillery primers.

Place: Near Texarkana, Texas.

Estimated Cost of management service (including cost of architect-engineer and construction subcontracts) under Title I: \$27,232,536.00.

Fixed-Fee for management service under Title I: \$120,781.00..

Estimated Cost of procuring equipment under Title II:
\$5,987,600.00.

Fixed-Fee for procuring equipment under Title II:
\$45,470.90.

Estimated Cost of Training Key Personnel under Title
III (Optional): \$250,000.00.

Fixed-Fee for Training Key Personnel under Title III:
\$1.00.

Estimated Cost of operation under Title IV (Optional):
\$44,690,000.00.

Fixed-Fee for operation under Title IV: \$480,000.00.

Payments to be made by Finance Officer, U. S. Army at
Fort Sam Houston, Texas.

The new ordnance facility, services and supplies to be
obtained by this instrument are authorized by, are for
the purposes set forth in, and are chargeable to the follow-
ing procurement authorities, the available balances of
which are sufficient to cover the cost of the same:

ORD 27,030 P99 A0141-02.

ORD 27,031 P99 A0141-02.

ORD 50,177 P510-31 A0025-13.

ORD 50,178 P531-32 A0025-13.

This contract is authorized by the following laws: The
Act of July 2, 1940 (Public No. 703, 76th Congress), the
Act of March 11, 1941 (Public No. 11, 77th Congress), and
the Act of June 30, 1941 (Public No. 139, 77th Congress).

(S.) L. H. Campbell, Jr., Brig. Gen., U. S. Army.

[fol. 295]

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[fol. 297] Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

This Contract, entered into this 23d day of July, 1941 by The United States of America, hereinafter called the Government, represented by the Contracting Officers executing this contract, and Lone Star Defense Corporation, a corporation organized and existing under the laws of the State of Ohio, with its principal office in the City of Akron, in the State of Ohio, hereinafter called the Contractor, witnesseth that:

Whereas, The Government desires to have the Contractor design, construct and equip a new ordnance facility by furnishing management services for such designing, constructing and equipping, by procuring the production equipment to be installed therein, and by subcontracting with third parties for necessary architect-engineer services and for constructing the new ordnance facility and installing the production equipment therein; and, at the option of the Government, train key personnel and operate the new ordnance facility more particularly described in Title I hereof, for the loading of fixed rounds, shells, bombs, boosters, fuzes, detonators, and artillery primers; and

Whereas, The accomplishment of the above-described work under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, As a result of such negotiations, the Secretary of War has directed that the Government enter into a cost-

plus a fixed fee contract with the Contractor for the accomplishment of the above-described work;

Now Therefore, The parties hereto do mutually agree as follows:

[fol. 298]

Title I

Management Service

Article I-A—Description of New Ordnance Facility

1. The new ordnance facility, hereinafter referred to as the "Plant", and designated as Lone Star Ordnance Plant, shall comprise a plant at or near Texarkana, Texas, upon a site to be furnished and made available by the Government, for the loading of fixed rounds, shells, bombs, boosters, fuzes, detonators, and artillery primers, including manufacture of amatol and of nitrate of ammonia from neutral nitrate of ammonia solution for the foregoing types of ammunition, having an estimated capacity as follows:

- 96,000 20mm Shell, or equivalent capacity of other similar types, per 24-hour day (2 lines of 48,000 each),
- 24,000 105mm Howitzer Shell, or equivalent capacity of other similar types, per 24-hour day (1 line),
- 8,400 15mm Shell, or equivalent capacity of other similar types, per 24-hour day (1 line),
- 2,880 100-lb. bombs, or equivalent capacity of other similar types, per 24-hour day (1 line),
- and corresponding fuzes and boosters for all the foregoing types of Ammunition;

as well as:

- 400,000 detonators for M20 boosters, or equivalent per 24-hour day (2 lines of 200,00 each),
- 100,000 artillery primers (M-23A1, or equivalent) per 24-hour day (1 line), and
- 50,000 artillery primers (M1B1A1, or equivalent) per 24-hour day (1 line).

2. Said Plant shall consist of such nine operating lines and appropriate lines for the corresponding boosters, and fuzes, and shall include loading buildings, Nitrate of Ammonia evaporating and graining buildings, administration buildings, shops, railroads, roads, steam lines, air lines, electric lines, telephone lines, fencing, lighting, power houses,

dormitories, water system, staff dwellings, mess hall, cafe-
[fol. 299] terias, guard quarters, fire fighting system and
housing thereof, and other buildings together with all
equipment necessary or appropriate for a loading plant of
the approximate capacity aforesaid, with storage buildings
adequate for about 30 days' supply of incoming materials
and about 60 days' production of finished product.

3. Said Plant shall conform, insofar as is practicable, with
typical designs, drawings, specifications, details, standards
or instructions which are on file in the offices of the Chief
of Ordnance and The Quartermaster General and which
shall be promptly furnished to the Contractor or which will
be furnished hereafter by the Contracting Officer; *Provided*,
however, that no portion of said Plant shall consist of a
permanent type of construction unless specifically author-
ized in advance by the Secretary of War; and *Provided fur-*
ther, that nothing herein shall prevent the use of a type of
construction sufficiently substantial for the use intended, in
the judgment of the Contracting Officer, as evidenced by his
approval of the plans and specifications.

Article I-B—Statement of Work

1. The Contractor shall, in the shortest reasonable time,
furnish the labor, materials, tools, machinery, equipment,
facilities, utilities, supplies not furnished by the Govern-
ment, and services, and do all things necessary for the com-
pletion of a Plant of the type and capacity described in
Article I-A hereof.

2. In the performance of the work described in Section I
of this Article I-B:

a. The Contractor shall furnish management service
covering supervision, direction and control of the designing
(including designing of the production equipment), engi-
neering and construction (including the installation of the
production equipment) of the Plant, and subject to the ap-
proval of the Contracting Officer, establish, equip and main-
tain adequate guard and fire fighting forces.

b. The Contractor shall subcontract, on forms prescribed
by The Quartermaster General, for Architect-Engineer serv-
ices covering design (including necessary design of produc-
tion equipment) and engineering and subcontract for the

construction (including the installation of production equipment) of the Plant, with subcontractors selected by the Quartermaster General and approved by the Contractor.

c. The performance of the work described in Paragraph *a* of this Section 2 of Article I-B shall be subject to the approval of the Contracting Officer appointed by the Chief of Ordnance.

[fol. 300] 3. Approval of performance of the subcontracts provided for in Paragraph *b* of Section 2 of this Article I-B shall be as follows:

a. The preparation of the general layout of the project and the detailed plans and working drawings for the manufacturing buildings and their equipment, including process steam generating plant and explosive storage buildings, shall be subject to approval by the Contracting Officer appointed by the Chief of Ordnance.

b. The preparation of the detailed plans and working drawings for roads, railroads, sewerage systems, water systems, electrical generating plants and transmission lines, heating plants, non-manufacturing buildings, such as offices, general warehouses and garages, and such miscellaneous construction as may be requested by the Chief of Ordnance shall be subject to approval by the Contracting Officer appointed by The Quartermaster General. All designs must have the approval of the Contracting Officer appointed by the Chief of Ordnance.

c. Performance of the construction work of the entire project will be under the direction of the Contracting Officer appointed by The Quartermaster General.

4. The Government shall furnish the Contractor such available schedules of preliminary data, layout sketches, and other available information respecting sites, topography, soil conditions, outside utilities and equipment, and shall make available to the Contractor such Government designs, drawings, specifications, details, standards and safety practices as are on hand in the offices of the Chief of Ordnance and The Quartermaster General and are applicable to the design, construction, and equipping of the said Plant.

5. All of the Contractor's notes and other data concerning the design, construction and equipping of the Plant shall

become the property of the Government and the Government shall have full right to use said notes and other data for any purpose it may desire, without any claim on the part of the Contractor for additional compensation. All such notes and other data shall be delivered to the Government whenever requested by the Contracting Officer and, furthermore, access to such notes and data shall be restricted to trusted and duly authorized representatives of the Government and of the Contractor.

Article I-C—Estimates

1. It is estimated that the total cost of the work under this Title I will be approximately *Twenty-seven Million Two Hundred Thirty-Two Thousand Five Hundred Thirty-Six Dollars (\$27,232,536.00)*, including the cost of all subcontracts but excluding the Contractor's fee and the procurement of production equipment provided for in Title II hereof.

[fol. 301] 2. It is estimated that the completed Plant will be ready for utilization by the Government within ten (10) months after the approval date of this contract.

3. It is expressly understood that neither the Government nor the Contractor guarantees the correctness of any of the estimates set forth in this Article I-C. The estimated total costs set forth in this Article I-C are based upon estimates agreed to by both the Government and the Contractor, copies of which are on file in the offices of the Chief of Ordnance and The Quartermaster General.

Article I-D—Consideration

As consideration for its undertaking under this Title I the Contractor shall receive the following:

1. Reimbursement for expenditures as provided in Title V.
2. A fixed-fee in the amount of *One Hundred Twenty Thousand Seven Hundred Eighty-One Dollars (\$120,781.00)* which shall constitute complete compensation for the Contractor's services, including profit.

Article I-E—Labor

1. The Contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of

the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at the time of payment, computed at wage rates not less than those determined by the Secretary of Labor for the work herein specified, regardless of any contractual relationship which may be alleged to exist between the Contractor, subcontractor and such mechanics and laborers; and said schedule of minimum wage rates will be posted by the Contractor in a prominent and easily accessible place at the site of the work.

2. The Contractor shall compensate laborers and mechanics for all hours worked by them in excess of eight hours in any one calendar day at a rate not less than one and one-half times the basic rate of pay of such laborers and mechanics and shall include a stipulation in each subcontract that laborers and mechanics will be paid at a rate not less than one and one-half times their basic rate of pay for all hours worked by them in excess of eight hours of any one calendar day.

3. All wage rates, including compensation for overtime under Section 2 of this Article, for laborers and mechanics engaged in work under this contract shall be approved in writing by the Chief of Branch or his duly authorized representative, and any amount paid by the Contractor to any [fol. 302] laborer or mechanic in excess of the wage rate so approved shall be at the expense of the Contractor and shall not be reimbursed by the Government. When, in connection with the audit and check by the Contracting Officer or his authorized representative, of the Contractor's payrolls prior to reimbursement as contemplated in Section 1 of Article V-A hereof, it is found that one or more laborers and/or mechanics have been paid wages at rates in excess of the wage rates approved as herein provided, the reimbursement made to the Contractor on account of such payrolls will not include such excess payments.

4. There may be withheld from the Contractor so much of the accrued payments as may be considered necessary by the Contracting Officer to pay to laborers and mechanics employed by the Contractor or any subcontractor on the work the difference between the rates of wages required by this contract to be paid laborers and mechanics on the work

and the rates of wages received by such laborers and mechanics and not refunded to the Contractor, subcontractor, or their agents.

5. In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid a rate of wages less than the rate of wages required by this contract to be paid as aforesaid, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the Contractor shall be liable to the Government for any excess costs occasioned the Government thereby.

6. *a.* The Contractor shall furnish to the Contracting Officer, within seven days after the regular payment date of each and every weekly payroll, an affidavit in the form prescribed by regulations issued by the Secretary of Labor and published in the Federal Register of March 1, 1941, 6 F. R. 1211, or any modification thereof pursuant to the Act of June 13, 1934, 48 Stat. 948 (U. S. Code Title 40, section 276 *b* and *c*), sworn to by the Contractor or the subcontractor concerned or by the authorized officer or employee of the Contractor or subcontractor supervising such payment, to the effect that each and every person employed on the work has been paid in full the weekly wages shown on the payroll covered by the affidavit; that no rebates have been or will be made either directly or indirectly to or on behalf of the Contractor or such subcontractor from the full weekly wages earned as set out on such payrolls; and that no deductions, other than permissible deductions as defined in the said regulations pursuant to said Act of June 13, 1934, and as described in said affidavit, have been or will be made, either directly or indirectly, from the full weekly wages earned as set out on such payroll.

[fol. 303] *b.* The Contractor shall comply with all applicable requirements of the said regulations of the Secretary of Labor under the Act of June 13, 1934, and the requirements of this Article of the contract shall be subject to all applicable provisions of such regulations.

c. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work to insure fulfillment of the requirements of this Article.

[fol. 304]

Title II

Procurement of Production Equipment

Article II-A—Statement of Work

1. The Contractor shall, in the shortest reasonable time, determine the production equipment requirements for the Plant and shall, subject to the approval of the Contracting Officer, thereupon proceed to do all things necessary and incident to the procurement of the production equipment required.

2. The Government reserves the right to furnish any production equipment necessary for the equipping of the Plant, provided such production equipment so to be furnished is of a suitable type and in satisfactory operating condition, upon so notifying the Contractor prior to any commitment by the latter therefor. In the equipping of the Plant the Contractor shall be free (but shall not be obligated) to use any production equipment of its own manufacture, upon advising the Government in advance as to the prices at which and the conditions upon which such production equipment will be supplied, which prices and conditions, however, shall not be less favorable than those quoted to third parties for similar quantities and deliveries, and may be quoted without regard to the provisions of Section 5 of Article V-A of Title V. In the event the Government is able to obtain production equipment of equal quality and quantity at a lower price or on more favorable conditions from any responsible competitive source or from its own manufacture, it may undertake to do so upon so informing the Contractor within ten (10) days after being advised of the Contractor's price for such equipment.

Article II-B—Estimates

It is estimated that the total cost under this Title II will be approximately Five Million Nine Hundred Eighty Seven Thousand Six Hundred Dollars (\$5,987,600.00), exclusive of the Contractor's fee. It is expressly understood, however, that neither the Government nor the Contractor guar-

antees the correctness of this estimate. The estimated total cost set forth in this Article II-B is based upon an estimate agreed to by both the Government and the Contractor, a copy of which is on file in the office of the Chief of Ordnance.

Article II-C—Consideration

As consideration for its undertaking under this Title II the Contractor shall receive the following:

1. Reimbursement for expenditures as provided in Title V.

[fol. 305] 2. A fixed-fee in the amount of *Forty-Five Thousand Four Hundred Seventy Dollars (\$45,470.00)*, which shall constitute complete compensation for the Contractor's services, including profit other than that included in the prices quoted pursuant to Section 2 of Article II-A of this Title II.

Article II-D—Eight-hour Law—Overtime Compensation

The Contractor shall compensate laborers and mechanics for all hours worked by them in excess of eight hours in any one calendar day at a rate not less than one and one-half times the basic rate of pay of such laborers and mechanics and shall include a stipulation in each subcontract that laborers and mechanics will be paid at a rate not less than one and one-half times their basic rate of pay for all hours worked by them in excess of eight hours of any one calendar day.

[fol. 306]

Title III

Training of Key Personnel (Optional)

Article III-A—Statement of Work

1. The obligation of the Contractor to proceed with the work under this Title III shall be conditioned upon receipt by the Contractor of notice in writing from the Contracting Officer so to do, and the prior appropriation and allocation of funds necessary therefor. Upon receipt by the Contractor of such notice, the Contractor shall hire or select the key personnel necessary for the operation of the Plant, and when such personnel is available shall proceed to train such personnel in the duties and functions of their respective positions, at the Contractor's plants, at Ordnance estab-

lishments, or elsewhere, in order that they will have obtained experience with the processes and operations involved in the Plant at any time when the Government shall exercise its option under Section 1 or Article IV-A of Title IV.

2. After completion of the work under Section 1 of this Article III-A, the Contractor shall, if directed by the Contracting Officer, until a date not in excess of six (6) months after the approval of this contract, use its best efforts to retain the group of key personnel trained hereunder in readiness for operation of the Plant should the Government exercise its option under Section 1 of Article IV-A of Title IV.

3. The extent and character of the work to be done by the Contractor under this Title III shall be subject to the approval of Contracting Officer to whom the Contractor shall report and be responsible. In the event that there should be any dispute with regard to the extent and character of the work to be done the matter shall be determined as provided in Article VII-M of Title VII.

Article III-B—Estimate

It is estimated that the cost of the work under this Title III will be approximately *Two Hundred Fifty Thousand Dollars (\$250,000.00)*, exclusive of the Contractor's fee. It is expressly understood that neither the Government nor the Contractor guarantees the correctness of this estimate. The estimated total cost set forth above is based upon an estimate agreed to by both the Government and the Contractor, a copy of which is on file in the Office of the Chief of Ordnance.

[fol. 307] Article III-C—Consideration

As consideration for its undertaking under this Title III the Contractor shall receive the following:

1. Reimbursement for expenditures as provided in Title V.

2. A fixed-fee of *One Dollar (\$1.00)* which shall constitute complete compensation for the Contractor's services under this Title III, including profit.

Article III-D—Eight Hour Law—Overtime Compensation

The Contractor shall compensate laborers and mechanics for all hours worked by them in excess of eight hours in any

one calendar day at a rate not less than one and one-half times the basic rate of pay of such laborers and mechanics and shall include a stipulation in each subcontract that laborers and mechanics will be paid at a rate not less than one and one-half times their basic rate of pay for all hours worked by them in excess of eight hours of any one calendar day.

[fol. 308]

Title IV

Operation of Plant (Optional)

Article IV-A—Statement of Work

1. The obligation of the Contractor to proceed with the work under this Title IV shall be conditioned upon receipt by the Contractor within *six (6)* months after the date of approval of this contract of the notice provided for in Section 1 of Article III-A of Title III hereof and receipt by the Contractor of notice in writing from the Contracting Officer so to do, and the prior appropriation and allocation of funds necessary therefor. Immediately upon receipt by the Contractor of such notice, and concurrently with the performance of the work required of it under Titles I, II and III hereof, the Contractor shall undertake all preparations necessary for the subsequent operation of the Plant, including the necessary training of personnel for such operation in addition to the key personnel trained pursuant to Title III hereof, and all other services incident to setting up an efficient and going operating force.

2. As each operating unit of the Plant is completed and ready for operation and the necessary preparation for operation and training of personnel has proceeded to a point where operation is practicable the Contractor shall so notify the Contracting Officer in writing and shall proceed to operate it as directed from time to time by the Contracting Officer, irrespective of whether or not the construction and equipping of the Plant as a whole shall have been completed.

3. Notwithstanding the fact that the construction and equipping of the Plant as a whole shall not have been completed, when all operating units thereof are completed and ready for operation without incurring hazards because of the lack of completion of the construction and equipping of

the Plant as a whole beyond those usual in the normal operation of a plant of the type provided for herein, the Contractor shall so notify the Contracting Officer in writing, and from and after the date of said notice the Contractor shall operate said Plant for a period of twelve (12) months; provided, however, that in no event shall the Contractor be obligated to operate said Plant either partially or completely under this section 3 or section 2 immediately preceding for a total period of more than eighteen (18) months after the Contractor has notified the Contracting Officer in writing that the first operating unit of said plant is completed and ready for operation as provided in section 2 above.

[fol. 309] 4. Upon written notice to the Contractor not less than ninety (90) days before the anticipated completion of the operation provided for in Section 3 next above, the Government may, at its option, authorize the continued operation of the Plant for an additional period of twelve (12) months, and the Contractor shall undertake such continued operation under the terms and conditions of this contract applicable to the operation of the Plant (including those relating to the fixed-fee for such additional operation, which fee shall be that provided in Section 3 of Article IV-C, hereof). Further continued operation, if any, of said Plant by the Contractor after said additional operation shall be subject to mutual agreement.

5. The Ammunition shall be loaded in accordance with the current applicable specifications which will be furnished by the Contracting Officer or which are contained in a list of drawings identified by the signatures of the parties hereto, and which is on file in the Office of the Chief of Ordnance.

6. The Government shall furnish all explosives, including neutral nitrate of ammonia solution for the manufacture of nitrate of ammonia and all metal parts (except metal parts for detonators which will be manufactured by the Contractor) for the loading of the Ammunition. The Contractor will furnish all packing and shipping materials (except fiber containers and bundle accessories therefor, which will be furnished by the Government). The foregoing explosives, materials and parts to be furnished by the Government will be delivered f.o.b. said Plant, when and as requisitioned from time to time by the Contractor, in sufficient quantities to

enable the Contractor to carry on the operation of the Plant provided for in this Title IV. The Contractor shall be under no obligation to accept or store or permit to be stored at said Plant any explosives which would render the work to be done by the Contractor hereunder hazardous beyond what is usual in the normal operation of a plant of the type provided for herein.

7. In carrying out the work under this Title IV the Contractor is authorized and shall do all things necessary or convenient in the operating and closing down of the Plant, or any part thereof including (but not limited to) the employment of all persons engaged in the work hereunder (who shall be subject to the control and constitute employees of the Contractor), the providing of all materials and supplies except such as the Government is to furnish or supply as elsewhere specifically provided herein, the storage of materials and supplies and of the finished products to the extent of the storage facilities at said Plant, the preparation of the product for shipment and the loading of same on cars or other carriers in accordance with the Government's shipping instructions.

[fol. 310] 8. In providing materials and supplies as provided in Section 7, next above, the Contractor shall be free (but shall not be obligated) to use any materials or supplies of its own manufacture, upon advising the Contracting Officer appointed by the Chief of Ordnance in advance as to the prices at which and the conditions upon which such materials and supplies will be provided, which prices and conditions, however, shall not be less favorable than those quoted to third parties for similar quantities and deliveries, and may be quoted without regard to the provisions of Section 5 of Article V-A of Title V. In the event the Government is able to obtain materials or supplies of equal quality and quantity at a lower price or on more favorable conditions from any responsible competitive source or from its own manufacture, it may undertake to do so upon so informing the Contractor within ten (10) days after being advised of the Contractor's price for such material and supplies.

9. The Contractor shall maintain a satisfactory system of inspection, gaging and gage checking concurrent with operations, and no ordnance material shall be submitted for

the Government inspector's approval which has not previously been inspected by agents of the Contractor and found to be up to the contract standard.

Article IV-B—Estimates

It is estimated that the cost of the work under this Title IV will be *Forty-Four Million Six Hundred Ninety Thousand Dollars (\$44,690,000.00)*, exclusive of the cost of continued operation covered by the option therefor provided in Section 4 of Article IV-A hereof, and exclusive of the Contractor's fee. It is expressly understood that neither the Government nor the Contractor guarantees the correctness of this estimate. The estimated total cost set forth above is based upon an estimate agreed to by both the Government and the Contractor, a copy of which is on file in the Office of the Chief of Ordnance.

Article IV-C—Consideration

As consideration for its undertaking under this Title IV the Contractor shall receive the following:

1. Reimbursement for expenditures as provided in Title V hereof.

2. A fixed-fee for the work under Sections 1, 2, and 3 of Article IV-A hereof in the amount of *Four Hundred Eighty Thousand Dollars (\$480,000.00)*, which fee shall constitute complete compensation (except for continued operation) for Contractor's services, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

[fol. 311] 3. A fixed-fee for continued operation provided in Section 4 of Article IV-A hereof, in the amount of *Four Hundred Eighty Thousand Dollars (\$480,000.00)* which fee shall constitute complete compensation for Contractor's services during continued operation, including profit, other than that included in the prices quoted pursuant to Section 8 of Article IV-a of this Title IV.

Article IV-D—Walsh-Healey Act

1. The following representations and stipulations pursuant to the Walsh-Healey Public Contracts Act (Act of June 30, 1936; 49 Stat. 2036; 41 USC 35-45), shall apply

to the operation of the Plant under this Title IV of this contract:

a. The Contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

b. All persons employed by the Contractor in the manufacture or furnishing of all materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles or equipment are to be manufactured or furnished under the contract; provided, however, that this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

c. No person employed by the Contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

d. No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the Contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

e. No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured [fol. 312] or fabricated in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the state in which the work or part thereof is to be performed shall be prima facie evidence of compliance with this paragraph.

f. Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel the same and to make open market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: Provided, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the United States of America.

g. The Contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the Act available for inspection by authorized representatives of the Secretary of Labor.

h. The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.00.

2. Paragraph *b* of Section 1 of this Article IV-D with respect to wages is inoperative due to no determination by

the Secretary of Labor of prevailing minimum wage rates for the industry involved.

[fol. 313] Article IV-E—Neutrality Act

Subsection 12 (g) of the Joint Resolution approved by the President, November 4, 1939, provides:

“No purchase of arms, ammunition, or implements of war shall be made on behalf of the United States by any officer, executive department, or independent establishment of the Government from any person who shall have failed to register under the provisions of this joint resolution.”

A copy of the Contractor's Certificate of Registration shall be filed in the Office of the Chief of Ordnance.

[fol. 314]

Title V

Cost of the Work and Payment Therefor

Article V-A—Reimbursement for Contractor's Expenditures

1. The Contractor shall be reimbursed in the manner hereinafter described for its actual expenditures in the performance of the work under this contract, when approved or ratified by the Contracting Officer, and as are included in but not limited to the following items:

a. All labor, materials, tools, machinery, equipment, facilities, supplies, utilities and services necessary for either temporary or permanent use for the benefit of the work, including the training of operating personnel. Unless otherwise directed in writing by the Contracting Officer, all articles of machinery or equipment valued at \$300 or less shall be classed as tools and shall be charged directly to the work.

b. All subcontracts made in accordance with the provisions of this contract.

c. Transportation, loading, unloading and storage charges on materials, supplies, and equipment.

d. Transportation and traveling expenses to and from the site of the Plant of the necessary field forces for the economical and successful prosecution of the work; transportation and traveling expense of such other employees of the Contractor whose full time is devoted to the work under

this contract as is actually incurred in connection with such work; and costs and expenses reimbursed to permanent employees of the Contractor transferred to or from the Plant on account of transportation of themselves, their families and their household goods.

Reimbursement for transportation and traveling expenses will be limited to the cost of transportation including Pullman where necessary and an allowance of *Six Dollars (\$6.00)* per day in lieu of all other expenses. Transportation by automobile on such required travel shall be reimbursed at the rate of Five Cents (\$.05) per mile as representing the actual cost of such transportation.

All travel shall be either authorized or approved in writing by the Contracting Officer. Should the Contractor or any representative thereof, remain in a travel status in excess of six (6) days at any one time, not including the time consumed in travel, the cost for such excess travel status shall be at the expense of the Contractor, unless otherwise [fol. 315] ordered or approved in writing by the Contracting Officer.

e. Expenses of procuring labor and expediting the production and transportation of material supplies and equipment.

f. Salaries of employees of the Contractor engaged full time directly on the work provided hereunder whether at the Plant or elsewhere. In case the full time of any employee of the Contractor at the Plant or elsewhere (except at the Contractor's home office covered by paragraph p of this Section 1) is not applied to the work, his salary shall be included in this item only in proportion to the actual time applied thereto. No person shall be assigned to service by the Contractor as superintendent of operation, chief engineer, chief purchasing agent, chief accountant, or similar position in the Contractor's organization at the Plant, or as principal assistant to any such person until there has been submitted to and approved by the Contracting Officer a statement of the previous salary, proposed salary, qualifications, and experience of the person selected for such assignment. It is recognized that in transferring men from their regular positions to the Plant, it may be necessary to make some increase in their remuneration, which shall be subject to the approval of the Contracting Officer.

g. Necessary temporary buildings and the equipment therefor and the cost of maintenance and operation thereof:

provided, however, that the costs and expenses of equipping and operating cafeterias and commissaries shall be reimbursed only as provided in the procedure relating thereto approved by the Contracting Officer.

h. Premiums on such bonds and insurance policies as the Contracting Officer or the Secretary of War may approve or require as reasonably necessary for the protection of the Government or the Contractor.

i. Losses and expenses, not compensated by insurance or otherwise (including settlements made with the written consent of the Contracting Officer), actually sustained by the Contractor in connection with the work and found and certified by the Contracting Officer to be just and reasonable unless reimbursement therefor is expressly prohibited herein.

j. The cost of reconstructing and replacing any of the work destroyed or damaged, to the extent not covered by insurance, but expenditures under this item must have the written authorization of the Contracting Officer in advance.

k. Payments made by the Contractor under the Social Security Act (employer's contribution) and any disbursements required by law which the Contractor may be required to pay on account of this contract, on or for any plant, equipment, process, organization, materials, supplies, or personnel or on moneys received as reimbursement therefor; and, if approved in writing by the Contracting Officer in advance, permit and license fees and royalties on patents used including those owned by the Contractor.

l. While the Contractor shall make every reasonable effort to have the finished product conform to the drawings and specifications referred to in Title IV hereof, it is recognized that variances therefrom are unavoidable and the Contractor shall be allowed all costs determined in accordance with this Article for re-working material because of rejection and for material finally rejected.

m. Extra compensation to employees, discontinuance wages and charges under welfare and other employee relations plans maintained by the Contractor; Provided, that the Government shall be chargeable therefor only insofar as the same are consistent with the general employee relations policies existing throughout the Contractor's organization, or are incurred pursuant to agreement made as a result of collective bargaining with the representatives of

employees, and are expressly authorized in writing by the Contracting Officer.

n. Accounting (including salaries and other expenses) in connection with special audits of accounts for the government in connection with work hereunder.

o. Expenses in connection with any temporary or permanent closing down of the plant.

p. 1. The fixed amount of *Eighty-Four Thousand Dollars* (\$84,000.00), payable in ten (10) equal monthly installments of *Eighty-Four Hundred Dollars* (\$8,400.00) each, the first such installment to be paid at the close of the calendar month in which this contract is approved, as complete compensation, including all general overhead, for all services performed by the Contractor at its home office in connection with the work under Titles I and II hereof except for the wages, salaries and transportation and traveling expenses of employees of the Contractor who devote full time to the work under such Titles I and II.

2. The fixed amount of *Twenty-Five Hundred Dollars* (\$2,500.00) per month for each calendar month of operation payable at the close thereof, subsequent to the commencement of the complete operation provided in Section 3 of Article IV-A of Title IV but not later than six (6) months after the date of the written notice to the Contracting Officer provided in Section 2 of Article IV-A hereof (including continued operation under Section 4 of such Article IV-A). [fol. 317] as complete compensation, including all general overhead, for all services performed by the Contractor at its home office in connection with the work under Titles III and IV hereof, except for the wages, salaries and transportation and traveling expenses of employees of the Contractor who devote full time to the work under such Titles III and IV. The initial amount shall be payable at the close of the calendar month during which such operation commences.

3. For the purposes of paragraphs *d*, *f*, and *p*, of this Section 1. of Article V-A, the term "full time" shall be deemed to refer to the time of employment of those employees engaged solely upon the work under this contract and who are carried on payrolls separate from the Contractor's payrolls relating to its other business and not to employees of the Contractor engaged part time on the work under this contract and part time on the Contractor's other business.

q. Disbursements incident to payment of payrolls, including but not limited to, the cost of disbursing cash, necessary guards, cashiers and pay masters. If payments to employees are made by check, facilities for cashing checks must be provided without expense to employees, and the Contractor shall be reimbursed therefor.

r. Such other items as should, in the opinion of the Contracting Officer, be included in the cost of the work. When such an item is allowed by the Contracting Officer, it shall be specifically certified as being allowed under this paragraph.

General

2. The Government reserves the right to furnish any materials, supplies, equipment, machinery, tools, or services, including communication services necessary for the performance of the work provided for under this contract, upon so notifying the Contractor prior to any commitment by the latter therefor. *

3. The Government reserves the right to pay directly to common carriers any and all transportation charges on materials, machinery, equipment and supplies.

4. The Government reserves the right to pay directly to the persons concerned, including the subcontractors referred to in Paragraph *b* of Section 2 of Article I-B of Title I, all sums due from the Contractor for labor, materials, or other charges.

5. No salaries of the Contractor's executive officers or partners, no part of the expense incurred in conducting the Contractor's main office or regularly established branch [fol. 318] offices, and no overhead expenses of any kind, except as specifically authorized in Section 1 of this Article, shall be included in the cost of the work under this contract; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

6. The Contractor shall, to the extent of its ability, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions and benifications, and when unable to take advantage of such benefits, it shall promptly notify the Contracting Officer to that effect and the reason therefor. In determining the actual net cost of articles and materials of every kind required for the purposes of this contract,

there shall be deducted from the gross cost thereof all cash and trade discounts; rebates, allowances, credits, salvage, commissions and benifications which have been accrued to the benefit of the Contractor or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of the Government, or lost through compliance with the provisions of Section 5 of Article V-C, shall not be deducted from gross costs.

7. All revenue from the operations of the hospital or other facilities, except commissaries and cafeterias, or from rebates, discounts, refunds, etc., shall be accounted for by the Contractor and applied in reduction of the cost of the work. Revenue from the operations of the commissaries and cafeterias shall be accounted for as provided in the procedure approved by the Contracting Officer under paragraph *g*, Section 1, of this Article V-A.

Article V-B—Payments

Reimbursement for Cost

1. *a*. The Government will currently reimburse the Contractor for expenditures made in accordance with Article V-A of this Title V, upon certification and delivery to and verification by the Contracting Officer of the original signed pay rolls for labor, receipted invoices for materials, equipment, etc., or other evidence satisfactory to the Contracting Officer. Reimbursement will be made as promptly as possible, generally weekly, but may be made at more frequent intervals if the conditions so warrant. All payments made under this paragraph *a* of Section 1 shall be subject to the provisions of Article V-C.

b. Payment of the sums provided in subparagraphs 1 and 2 of paragraph *p*, of Section 1 of Article V-A shall be made as provided therein.

Payment of the Fixed-Fees

2. *a*. The fixed-fee provided for in Article I-D of Title I [fol. 319] shall be paid in partial payments, less ten percent (10%) of each such partial payment, on the last working day of each calendar month from and after the approval date of this contract, as it accrues, based upon estimates

made by the Contractor and approved by the Contracting Officer of the percentage of completion of the work and services provided for in Title I.

b. The fixed-fee provided for in Article II-C of Title II shall be paid in partial payments, less ten percent (10%) of each such partial payment, on the last working day of each calendar month from and after the approval date of this contract, as it accrues, based upon estimates made by the Contractor and approved by the Contracting Officer of the percentage of completion of the work and services provided for in Title II.

c. The fixed-fee of One Dollar (\$1.00) provided for in Article III-C shall be paid upon the completion of the work provided therein.

d. The fixed-fee provided for in Section 2 of Article IV-C of Title IV shall be paid as follows:

(1) *Sixty Thousand Dollars (\$60,000.00)*, payable in six (6) equal monthly installments of *Ten Thousand Dollars (\$10,000.00)* each, less ten percent (10%) of each installment, the first such installment to be payable thirty (30) days after the receipt by the Contractor of the notice provided for in Section 1 of Article IV-A, and the remaining installments to be payable on the same day of each of the next succeeding five (5) months.

(2) *One Hundred Twenty Thousand Dollars (\$120,000.00)*, payable in six (6) equal monthly installments of *Twenty Thousand Dollars (\$20,000.00)* each, less ten percent (10%) of each installment, the first such installment to be payable thirty (30) days after the date of the written notice to the Contracting Officer, provided for in Section 2 of Article IV-A hereof, that the first operating line of the Plant is completed and ready for operation, and the remaining installments to be payable on the same day of each of the next succeeding five (5) months.

(3) *Three-Hundred Thousand Dollars (\$300,000.00)*, payable in twelve (12) equal monthly installments of *Twenty-five Thousand Dollars (\$25,000.00)* each, less ten percent (10%) of each installment, the first such installment to be payable either thirty (30) days after the final payment under paragraph (2) next preceding becomes payable, or thirty (30) days after the date of the written notice

to the Contracting Officer provided for in Section 3 of Article IV-A hereof, whichever is earlier, and the remaining installments to be payable on the same day of each of the [fol. 320] next succeeding eleven (11) months.

e. The fixed-fee provided for in Section 3 of Article IV-C of Title IV shall be paid as follows:

(1) *Four Hundred Eighty Thousand Dollars (\$480,000.00)* for the operation of the plant during the additional period of twelve (12) months provided for in Section 4 of Article IV-A hereof, payable in twelve (12) monthly installments of *Forty Thousand Dollars (\$40,000.00)* each, less ten percent of each installment, the first such installment to be paid 30 days after the beginning of said additional twelve-months period and the remaining installments to be paid on the same day of each of the next succeeding eleven months.

Payments by Contractor

3. a. If bills for purchase of materials, machinery, or equipment, or pay rolls covering employment of laborers or mechanics incurred by the Contractor or by any subcontractor under this contract are not promptly paid by the Contractor or subcontractor, as the case may be, the Contracting Officer may, in his discretion, withhold from payments otherwise due the Contractor an amount equivalent to the amount of any such bill or pay roll until such bill or pay roll is paid. Should the Contractor neglect or refuse to pay such bills or pay rolls or to direct any subcontractor to pay such bills or pay rolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right to pay such bills or pay rolls directly provided such bills or pay rolls are not disputed in good faith by the Contractor or subcontractor, and in such event a deduction equal to five per cent (5%) of the amount so paid directly shall be made from the Contractor's fee.

b. Anything herein to the contrary notwithstanding, the Contractor shall have no obligation regarding and no responsibility in connection with the audit and payment of bills, accounts or other charges of the subcontractors referred to in Paragraph b of Section 2 or Article I-B of Title I.

Final Payment

4. Upon completion of the work under Titles I and II and its final acceptance in writing by the Contracting Officer, and again upon the completion of the work under Title IV, the Government shall pay to the Contractor the unpaid balance of the cost of the work determined under Title V hereof, and of the fees, less any sum that may be necessary to settle any unsettled claims for labor or materials, or any claim the Government may have against the Contractor. The Contracting Officer shall accept or reject the completed work with reasonable promptness. The Contractor shall, if required, furnish the Government with a release of all claims against the Government arising under and by virtue of this contract other than such claims, if any, as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein.

Failure of the Government to Make Payments

5. In the event of failure of the Government to make any payments or advances as provided in this Title V (other than by reason of normal delay in the payment of current expenditures incident to the checking by the disbursing officer of statements of such expenditures), the Contractor may suspend its performance hereunder until the full amount of any deficiency shall have been paid. The exercise of this right shall be without prejudice to any other rights or remedies of the Contractor on account of such failure by the Government; and failure of the Contractor to exercise such right shall not constitute a waiver thereof with respect to any continuing or subsequent failure on the part of the Government.

Article V-C—Advances

1. At any time, and from time to time, after the execution of this contract, the Government, at the request of the Contractor, and subject to the approval of the Chief of Ordnance as to the necessity therefor, shall advance to the Contractor without payment of interest thereon by the Contractor, a sum or sums not in excess of thirty percent (30%) of the estimated cost of the work under this contract (as increased or decreased pursuant to the provisions of Article VII-B of Title VII or as increased pursuant to the provi-

sions of Article IV-A of Title IV). When approximately sixty percent (60%) of said estimated cost (as increased or decreased pursuant to the provisions of Article VII-B of Title VII or as increased pursuant to the provisions of Article IV-A of Title IV) shall have been paid under Section I of article V-B, a revised estimate of such costs shall be made by the Contractor; and if it appears that the then estimated cost exceeds the amount of the original estimate (increased or decreased as provided above), and the revised estimate is approved by the Chief of Ordnance, the Government shall under the conditions stated above advance to the Contractor without interest, not to exceed thirty percent (30%) of such excess. Such advance or advances shall be made in each case upon the furnishing of such surety bonds in such penal sums not exceeding the total aggregate advance as the Secretary of War may prescribe; Provided, that the Secretary of War shall have prescribed the furnishing of a surety bond in connection with such ad- [fol. 322] vances, as security additional to that provided for in this contract; and Provided, Further, that if at any time the Secretary of War deems the security for any advance or advances theretofore made inadequate, the Contractor shall furnish on demand such other security, in the form of a surety bond or surety bonds, as will be satisfactory to the Secretary of War but at no time shall the Contractor be required to maintain in force a surety bond or surety bonds, the total aggregate penal sums of which exceed the aggregate amount of the advances authorized by the Secretary of War under this contract. It is understood that the Government will advance to the Contractor, pursuant to this Article V-C, the sums currently necessary to the Contractor for working capital to carry on the work contemplated under this contract, not in excess of thirty percent (30%) of the estimated cost of such work.

2. Whenever there shall be paid to the Contractor, pursuant to Section 1 of Article V-B reimbursement which, when added to the advance payment or payments made pursuant to Section 1 of this Article V-C, shall equal the full amount of the estimated cost of said work under this contract (as increased or decreased pursuant to the provisions of Section 1 of this Article V-C), no additional payment on account of said work shall be made to the Contractor by the Government until said advance payments are expended; Provided, however, that if the total cost of the

work shall be in excess of the amount so paid to the Contractor including said advance payments, the Government, upon presentation of satisfactory evidence, shall currently and promptly reimburse the Contractor to the extent of such excess cost (subject to any delay in the availability of appropriated funds); Provided, further, that if upon termination of the contract for other than the default of the Contractor there shall remain due the Government from the Contractor any sum theretofore advanced by the Government under this contract and not fully liquidated as above provided, the same shall be applied against any payments due the Contractor and any remaining balance of such sums shall be returned to the Government forthwith after final audit by the Government of all accounts hereunder.

3. In the event of cancellation or termination of this contract because of the default of the Contractor, the Contractor agrees to return to the Government, upon demand, without set-off of any sum alleged to be due the Contractor, the outstanding balance of any advance payment; Provided, however, that the Contractor may retain in the account an amount sufficient to meet the outstanding obligations incurred by it in good faith under this contract pursuant to authorization by the Contracting Officer until assumption and discharge of such obligations by the Government or final disallowance thereof. Furthermore, if, in the opinion of the Chief of Ordnance, the unliquidated [fol. 323] balance of the advance or advances made by the Government under this contract exceeds the amount necessary for the current needs of the Contractor, as determined by the Chief of Ordnance, the amount of such excess shall, upon demand made by the Chief of Ordnance, be promptly returned to the Government and will be credited against the balance due the Government for advances previously made. If the demand made in either event set forth above is not met within fifteen (15) days after the receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) per annum from the date of the demand until payment is made.

4. All funds received as advance payments under this contract, together with all funds received as reimbursements for the cost of the work under paragraph a of section 1 of Article V-B of this contract, shall be deposited in a special bank account or accounts separate from the Con-

Contractor's general or other funds in a bank which is a member of the Federal Reserve System. Such a special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose and shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this contract and not for the general business of the Contractor. Balances in such special account or accounts shall at all times secure the repayment of such advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances, which lien shall be superior to any lien of the bank upon such account or accounts by virtue of assignment or otherwise; Provided, however, that any bank in which such funds are deposited shall have no obligation whatever with respect to the use or disposition by the Contractor of funds withdrawn from such account or accounts or be liable for misuse by the Contractor of funds withdrawn prior to the receipt by such bank of notice from the Chief of Ordnance or the order of a court of competent jurisdiction directing it to refrain from permitting withdrawals by the Contractor. The Contracting Officer shall at all times be afforded proper facilities for inspection and audit of such special bank account or accounts.

5. The Contractor may pay to any third party for services in advance or pay for materials or supplies in advance of delivery at the site of the work or at an approved storage site, any of the sums previously advanced to it by the Government under the provisions of this contract, with the prior written approval of the Contracting Officer.

[fol. 324]

Title VI

Termination

Article VI-A—Termination by Government

1. The Government may terminate this contract at any time by a notice in writing from the Contracting Officer to the Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor or which the Contractor may have against the Government. Upon receipt of such

notice, the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with performance of this contract and shall proceed to cancel promptly, insofar as it is possible to do so, all existing orders and terminate all subcontracts insofar as such orders and subcontracts are chargeable to this contract.

2. If this contract is terminated for the fault of the Contractor, the Contracting Officer may enter upon the premises for the purpose of completing the work contemplated by this contract, take possession of any or all materials, tools, machinery, equipment and appliances, and exercise all options, privileges, and rights, and may complete or employ any other person or persons to complete said work.

3. Upon the termination of this contract, full and complete settlement of all claims of the Contractor arising out of this contract shall be made as follows:

a. The Government shall assume and become liable for all obligations, commitments, and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with said work and the cost of which would be reimbursable in accordance with the provisions of this contract; and the Contractor shall, as a condition of receiving the payments mentioned in this Title, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government the rights and benefits of the Contractor under such obligations or commitments.

b. The Government shall reimburse the Contractor for all expenditures made in accordance with Title V and not previously reimbursed.

c. The Government shall reimburse the Contractor for [fol. 325] such further expenditures, made after the date of termination, for the protection of Government property and for accounting services in connection with the settlement of this contract as are required or approved by the Contracting Officer.

d. If the contract is terminated for the convenience of the Government, the Contractor will be paid all fees which have accrued at the date of termination, less fee payments previously made. If the contract is terminated due to fault of

the Contractor, no additional payment on account of the fixed-fees will be made.

c. The obligation of the Government to make any of the payments required by this Title, or by Title V of this contract, shall be subject to any unsettled claims which the Government may have against the Contractor.

4. Prior to final settlement the Contractor shall, if required, furnish a release as required in Section 4 of Article V-B of Title V hereof.

[fol. 326]

Title VII

General

Article VII-A—Responsibility of Contractor—Contingencies

While it is the purpose and intent of the Contractor to exercise the same degree of care (unless otherwise directed by the Government) in carrying out and performing the work provided for in this contract as it would if the plant to be constructed, equipped and operated belonged to the Contractor, nevertheless, because of the abnormal conditions existing, it is agreed by and between the parties hereto as follows, to-wit:

1. All work under this contract is to be performed at the expense of the Government, and the Government shall indemnify and hold the Contractor harmless against any loss, expense (including expense of litigation) or damage (including personal injuries and deaths of persons and damage to property of any kind whatsoever arising out of or connected with the performance of the work, unless such loss, expense or damage should be shown by the Government to have been caused directly by bad faith or willful misconduct on the part of some officer or officers of the Contractor acting within the scope of his or their authority and employment.

2. The Government recognizes that the work herein provided for is of a highly dangerous nature and that its accomplishment under existing conditions will be attendant with even greater risk of damage to property, injuries to persons and failures or delays in performance due to uncertain and unexpected causes than would normally exist.

The Contractor is unwilling to assume said risks for the consideration herein provided. It is therefore agreed that the Contractor shall not be liable to the Government in any amount whatever for failure or delay in performance by it hereunder, or for any damage to or destruction of property, or for any injury to or death of persons arising out of or in connection with the work hereunder, no matter what the cause thereof may be or may seem to be, unless same shall be shown by the Government to have been caused directly by bad faith or willful misconduct on the part of some officer of officers of the Contractor acting within the scope of his or their authority and employment.

Article VII-B—Changes

The Contracting Officer may at any time after consultation with the Contractor, by a written order and without notice to the sureties, make changes in or additions to the drawings and specifications, issue additional instructions, require additional work but not to exceed, without the consent of the Contractor, 25% of the original work, or direct [fol. 327] the omission of work covered by the contract. If such changes cause a material increase or decrease in the amount of the work to be done under this contract, or in the time required for its performance, an equitable adjustment of the amount of the fixed-fees to be paid to the Contractor shall be made and the contract shall be modified in writing accordingly; Provided, however, that there shall be no adjustment in the amount of the fixed-fees as provided herein nor shall there be any claim for increased compensation because of any errors and/or omissions made in computing the original estimates of cost hereunder or where the estimated costs vary from the actual costs. Any claim for adjustment under this Article must be asserted within ten (10) days from the date the change is ordered: Provided, however, that the Contracting Officer, if he determines that the facts justify such action, may receive and consider, and with the approval of the Chief of Branch, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Article VII-M hereof, but nothing provided in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

Article VII-C—Title

The title to all work, completed or in the course of construction, preparation or manufacture shall be in the Government. Likewise, upon delivery at the site of the work, at an approved storage site or other place approved by the Contracting Officer and upon inspection and acceptance in writing by the Contracting Officer, title to all materials, tools, machinery, equipment and supplies, for which the Contractor shall be entitled to be reimbursed under Title V hereof shall vest in the Government. These provisions as to title being vested in the Government shall not operate to relieve the Contractor from any duties imposed under the terms of this contract.

Article VII-D—Materials and Workmanship

1. The work shall be executed in the best and most workmanlike manner by qualified, careful, and efficient workers, insofar as they are available, in strict conformity with the best standard practices.

2. Except it be otherwise authorized by the Contracting Officer, all materials shall be of the best quality of their respective kinds. If the Contracting Officer requires that the Contractor submit for prior approval samples of materials proposed for use in the work covered by this contract, the Contractor shall make no commitments for such materials until the submitted samples have been approved by the contracting Officer.

[fol. 328] Article VII-E—Records and Accounts—Inspection and Audit

1. The Contractor agrees to keep records and books of account, on a recognized cost-accounting basis, showing the actual cost to it of all items of labor, materials, equipment, supplies, services, and other expenditures of whatever nature for which reimbursement is authorized under the provisions of this contract. The system of accounting to be employed by the Contractor shall be such as is satisfactory to the Contracting Officer.

2. The Contracting Officer shall at all times be afforded proper facilities for inspection of the work and of the special bank account or accounts provided for in Article V-C

hereof, and shall at all times have access to the premises, work and materials, to all books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description of the Contractor pertaining to said work; and the Contractor shall, except such original documents as are submitted in support of reimbursement vouchers, preserve for a period of 3 years after completion or termination of this contract, all the books, records, and other papers herein mentioned.

3. Any duly authorized representative of the Contractor shall be accorded the privilege of examining the books, records, and papers of the Contracting Officer relating to the cost of the work for the purpose of verifying such cost.

4. The Contracting Officer shall have the right to decide which functions of checking and auditing are to be performed exclusively by the Government and to prescribe procedures to be followed by the Contractor in such accounting, checking and auditing functions as he may continue to perform. The employment and number of personnel to be engaged by the Contractor for checking, auditing, and accounting work shall be subject to the approval of the Contracting Officer and if, in the opinion of the Contracting Officer, the number of employees engaged in checking, auditing and accounting work is excessive, the Contractor shall make such reductions in force as the Contracting Officer deems necessary.

Article VII-F—Special Requirements

The Contractor hereby agrees that it will:

1. Procure and thereafter maintain such bonds and insurance in such forms and in such amounts and for such periods of time as the Contracting Officer may approve or require in writing.

2. Procure all necessary permits and licenses; obey and [fol. 329] abide by all applicable laws, regulations and ordinances and other rules of the United States of America, of the state, territory, or subdivision thereof wherein the work is done, or of any other duly constituted public authority.

3. Unless this provision is waived in writing by the Contracting Officer, reduce to writing every contract in excess of *Two Thousand Dollars (\$2,000.00)* made by it for the pur-

pose of the work hereunder for services (except contracts of employment), materials, supplies, machinery, or equipment, or for the use thereof, insert therein a provision that such contract is assignable to the Government; make all such contracts in its own name, and not bind or purport to bind the Government or the Contracting Officer thereunder. No purchases in excess of *Five Hundred Dollars (\$500.00)* shall be made or placed without the approval of the Contracting Officer.

4. Enter into no subcontract for any portion of the work without the written approval of the Contracting Officer. Subcontracts are defined as contracts entered into by the Contractor with others which involve the performance, wholly or in part, at the site of the work, of some part of the work described in Title I and II hereof.

5. At all times during the progress of the work keep at the site thereof a duly appointed and qualified representative who shall receive and execute on the part of the Contractor such notices, directions, and instructions as the Contracting Officer may give under the terms of this contract.

6. The Contracting Officer may require the Contractor to dismiss from the work any employee the Contracting Officer deems incompetent or whose retention is deemed to be not in the public interest, subject however to appeal under the provisions of Article VII-M for reinstatement of such employee.

7. At all times use its best efforts in all acts hereunder to protect and subserve the interest of the Government.

Article VII-G—Preference for Domestic Articles

In the performance of the work covered by this contract the Contractor, subcontractors, materialmen or suppliers, shall use only such unmanufactured articles, materials and supplies as have been mined or produced in the United States, and only such manufactured articles, materials and supplies as have been manufactured in the United States substantially all from articles, materials or supplies mined, produced or manufactured, as the case may be, in the United States. The foregoing provision shall not apply to [fol. 330] such articles, materials or supplies of the class or

kind to be used or such articles, materials or supplies from which they are manufactured, as are not mined, produced or manufactured; as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or to such articles, materials or supplies, as may be excepted by the Secretary of War under the proviso of Title III, Section 3, of the Act of March 3, 1933: 47 Stat. 1520 (41 U.S.C. 10b).

Article VII-H—Convict Labor

The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

Article VII-I—Workmen's Compensation Laws

During the life of this contract the Contractor will provide and maintain, for all employees of the Contractor engaged in work under this contract, Workmen's Compensation Insurance or such other protection for employees as may be required by federal or state statutes in the jurisdiction in which such work is performed, under direction of the Contracting Officer.

Article VII-J—Accident Prevention

The Contractor shall at all times exercise reasonable precaution for the safety of employees on the work and shall comply with all applicable provisions of federal, state, municipal and local safety laws and building and construction codes.

Article VII-K—Officials Not to Benefit

No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Article VII-L—Covenant Against Contingent Fees

The Contractor warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to terminate the contract, or in its discretion, to deduct

from payments due the Contractor the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable by Contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

[fol. 331] Article VII-M—Disputes

Except as otherwise specifically provided herein, all disputes concerning questions of fact arising under this contract shall be decided by the Contracting Officer, subject to written appeal by the Contractor within 30 days to the Chief of Branch concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto, when the amount involved is \$50,000.00 or less. When the amount involved is more than \$50,000.00, or when the dispute arises under Section 6 of Article VII-F, or where no specific amount is involved, the decision of the Chief of Branch shall be subject to written appeal within 30 days by the Contractor to the Secretary of War or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. In the meantime the Contractor shall diligently proceed with the work as directed. Nothing in this Article VII-M, shall be construed to deprive the Contractor of any legal remedies it may have; *Provided*, however, that this reservation shall not be construed to impair the finality of the decisions of the Chief of Branch and of the Secretary of War, respectively, as above set forth.

Article VII-N—Contractor's Organization and Methods

Within a reasonable time after the execution of this contract the Contractor shall submit to the Contracting Officer a chart showing the executive and administrative personnel to be regularly assigned for full or part time service in connection with the work under this contract, together with a written statement of their duties and the administrative procedure to be followed by the Contractor for the control and direction of the work; and the data so furnished shall be supplemented as additional pertinent data become available. There shall also be submitted to the Contracting Officer by the Contractor charts of the various field organiza-

tions showing all personnel, other than artisans, mechanics, helpers, and laborers to be assigned for full or part time service outside of the central office organization, together with a written statement of their duties and rates of pay and the procedure proposed to be followed by the Contractor for the accomplishment of all field work, including temporary requirements; and the data so furnished shall be supplemented as additional pertinent data become available. Statements of procedure shall include purchasing, disbursing, accounting, transportation, storage, employment, housing, sanitation, subsistence, recreation and similar essential activities and methods.

Article VII-O—Assignment of Claims

Neither this contract, nor any interest therein, shall be assigned or transferred by the Contractor to any other party of parties..

[fol. 332] Article VII-P—Approval Required

This contract shall be subject to the written approval of the Secretary of War and shall not be binding until so approved.

Article VII-Q—Statutory Provisions

It is understood that the respective undertakings to conform to the requirements of the several statutes hereinbefore referred to shall be operative only so long as and to the extent that such statutory requirements are applicable hereunder.

Article VII-R—Racial Discrimination

The Contractor, in performing the work required by this contract, shall not discriminate against any worker because of race, creed, color or national origin.

Article VII-S—Definitions

1. The term "Chief of Branch" refers to the Chief of Ordnance or The Quartermaster General.
2. The terms "Secretary of War" or "Chief of Branch" shall include their duly authorized representatives as the case may be other than the Contracting Officer.

3. For the original signing of this contract, the terms "Contracting Officer" as used herein shall be deemed to include the Contracting Officer appointed by The Quartermaster General and the Contracting Officer appointed by the Chief of Ordnance.

4. The term "Contracting Officer" when used in connection with the approval of performance of construction work of the entire project, and in connection with the approval of preparation of detailed plans and working drawings for roads, railroads, sewage systems, water systems, electrical generating plants and transmission lines, heating plants, non-manufacturing buildings, such as offices, general warehouses and garages, and such miscellaneous construction as may be requested by the Chief of Ordnance, refers to the Contracting Officer appointed by The Quartermaster General, or to his successor or duly authorized representative; and when used in connection with any other phase of the work to be performed under this contract it refers to the Contracting Officer appointed by the Chief of Ordnance, or to his successor or duly authorized representative.

[fol. 333] Article VII-T—Alterations

The following alterations were made in this contract before it was signed by the parties hereto:

None.

[fol. 334] In Witness Whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

The United States of America, by (S.) L. H. Campbell, Jr., Brig. Gen., U. S. Army (Contracting Officer Appointed by Chief of Ordnance), by (S.) Homer W. Jones, Lieut. Col., U. S. A. G. D. (Contracting Officer Appointed by The Quartermaster General.)

Approval Recommended: July 25, 1941.

(S.) C. M. Wesson, Major General, Chief of Ordnance.

Lone Star Defense Corporation (Contractor), by (S.) T. G. Graham, Vice Pres., Akron, Ohio (Business Address.)

Approval Recommended: July 25, 1941. (S.) E. B. Gregory, Major General, The Quartermaster General.

Approved Jul. 28, 1941, by direction of the Secretary of War.

(S.) Robert P. Patterson, Under Secretary of War.

Two Witnesses as to Execution by the Contractor: (S.) William E. Hill, Washington, D. C. (Address); (S.) Hubert E. Evans, Washington, D. C. (Address).

[fol. 335] I, S. M. Jett, certify that I am the Secretary of the corporation named as Contractor herein; that T. G. Graham who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(S.) S. M. Jett. (Corporate Seal.)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, T. G. Graham who signed this contract for the Lone Star Defense Corporation had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

(S.) L. H. Campbell, Jr., Brig. Gen., U. S. Army.

[fol. 336]

Performance Bond

Know all men by these presents, that we, Lone Star Defense Corporation, Akron, Ohio, a corporation organized and existing under the laws of the State of Ohio, as Principal, and The B. F. Goodrich Company, Akron, Ohio, a corporation organized and existing under the laws of the State of New York as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in a penal sum unlimited in amount for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal entered into a certain contract No. W-ORD-516 DA-W-ORD-3 hereto attached, with the Government, dated July 23, 1941, for

"Furnishing management service (including subcontracts for architect-engineer services and construction of a new

ordnance facility and installation of equipment therein), procuring production equipment, training key personnel for and operating a new ordnance facility for the loading of fixed rounds, shells, bombs, boosters, fuzes, detonators and artillery primers."

Now therefore, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original terms of said contract and any extensions thereof that may be granted by the Government, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this 23d day of July, 1941, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

War Department, Office of The Judge Advocate General

Washington, D. C., Aug 12, 1941.

The within bond is in due form of law, properly executed; and the evidence submitted shows that the officers, agents, or attorneys, who signed the bond have authority to execute and deliver it on behalf of the surety.

(S.) David S. McLean, Major, J. A. G. D., Assistant to the Chief, Contracts Section.

[fol. 337] Lone Star Defense Corporation (Corporate Principal), Akron, Ohio (Business Address), by (S.) T. G. Graham, Vice Pres. (Affix Corporate Seal):

Attest: (S.) S. M. Jett, Sec.

The B. F. Goodrich Company (Corporate Surety), Akron, Ohio, By (S.) T. G. Graham, Vice Pres. (Affix Corporate Seal).

Attest: (S.) S. M. Jett, Sec.

Certificate As to Corporate Principal

I, S. M. Jett, certify that I am the Secretary of the corporation named as principal in the within bond; that T. G. Graham, who signed the said bond on behalf of the principal, was then Vice President of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

(S.) S. M. Jett. (Corporate Seal.)

Certificate As to Corporate Surety

I, S. M. Jett, certify that I am the Secretary of the corporation named as surety in the within bond; that T. G. Graham, who signed the said bond on behalf of the surety, was then Vice President of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.

(S.) S. M. Jett. (Corporate Seal.)

[fol. 338] Approved: Oct. 9, 1942. L. H. Campbell, Jr.,
Major General, Chief of Ordnance. VCR, By (S.) T. J.
Hayes, Major General.

Contract No. W-ORD-516

Supp. 1 DA-W-ORD-3

Supplemental Contract

to

Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

War Department

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Contract for: Supplemental Contract to modify terms of the original contract regarding storage of materials, Walsh-Healey Act, telegraph charges, title to materials, accounting,

insurance and definitions, and to include stipulations regarding race discrimination and renegotiation.

Place: Near Texarkana, Texas.

Payments to be made by Finance Officer, U. S. Army at Fort Sam Houston, Texas.

The new ordnance facility, services and supplies to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same:

ORD 27,030 P99 A0141-02

ORD 27,031 P99 A0141-02

ORD 50,177 P510-31 A0025-13

ORD 50,178 P531-32 A0025-13

(S.) Rosswell E. Hardy, Brig. Gen., Ord. Dept.
JJMcI.

This contract is authorized by the following law: The act approved July 2, 1940 (Public No. 703, 76th Cong.) as extended, the act approved December 18, 1941 (Public Law 354-77th Cong.) and Executive Order No. 9001 dated December 27, 1941.

[fol. 339]

Supplemental Contract

This Supplemental Contract, entered into this 16th day of September, 1942, by THE UNITED STATES OF AMERICA, hereinafter called the Government, represented by the Contracting Officers executing this contract, and LONE STAR DEFENSE CORPORATION, a corporation organized and existing under the laws of the State of Ohio, of the city of Akron, in the State of Ohio, hereinafter called the Contractor, witnesseth that:

Whereas, there is now in force between the parties hereto a certain contract identified by the Government as Contract No. W-ORD-516 DA-W-ORD-3 and being hereinafter sometimes referred to as the "Original Contract"; and

Whereas, the Under Secretary of War has from time to time issued directives for the modification of existing contracts to include certain matters; and

Whereas, the Government now desires to modify the terms of said Original Contract regarding the storage of materials, Walsh-Healey Act, telegraph charges, title to mate-

rials, accounting, insurance and definitions, and to include stipulations relative to race discrimination and renegotiation; and

Whereas, the accomplishment of such changes under a contract entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, the Contractor has agreed to such modifications upon the terms, conditions, and provisions hereinafter set out; and

Whereas, as a result of negotiations, the Secretary of War has directed that the Government enter into a supplemental contract with the Contractor for the accomplishment of the above described changes;

Now, therefore, the parties hereto do mutually agree that the said Original Contract shall be and it is hereby modified in the following particulars:

[fol. 340] A. Change Section 6 of Article IV-A of Title IV to read:

6. The Government shall furnish all explosives, including neutral nitrate of ammonia solution for the manufacture of nitrate of ammonia and all metal parts for the loading of the Ammunition. The Contractor will furnish all packing and shipping materials (except fiber containers and bundle accessories therefor, which will be furnished by the Government). The foregoing explosives, materials and parts to be furnished by the Government will be delivered f.o.b. said Plant, when and as requisitioned from time to time by the Contractor, in sufficient quantities to enable the Contractor to carry on the operation of the Plant provided for in this Title IV.

(a) The Contractor shall accept, handle and store, within the storage capacity of the Plant not immediately necessary for use in connection with the operation of the Plant, such materials and explosives as it may be directed from time to time by the Contracting Officer; provided, that the Government shall remove or cause to be removed any materials or explosives so stored whenever the storage capacity so utilized becomes necessary to the operation of the Plant, and provided, further, that the Contractor shall be under no obligation to accept or store or permit to be stored at said Plant, any explosives which would render the work to be done by the Contractor hereunder hazardous beyond what

is usual in the normal operation of a Plant of the type provided for herein.

B. Change the initial paragraph of Section 1 and change Subsections *c.* and *d.* of said Section 1 of Article IV-D, Title IV (WALSH-HEALEY ACT) to read as follows:

1. The following representations and stipulations pursuant to the Walsh-Healey Public Contracts Act, as amended, (Act of June 30, 1936; Public Law 846-74th Cong.; Act of May 13, 1942; Public Law 552-77th Cong.) and pursuant to the regulations promulgated thereunder by the Secretary of Labor, shall apply to the performance of this contract:

c. No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor: *Provided, however,* that the provisions of this stipulation shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an act entitled "The Fair Labor Standards Act of 1938"; provided further, that in the case of such an employer, during the life of the agreement referred to, the applicable overtime rate set by the Secretary of Labor shall be paid for hours in excess of 12 in any 1 day or in excess of 56 in any 1 week and if such overtime is not paid, the employer shall be required to compensate his employees during that week at the applicable overtime rate set by the Secretary of Labor for hours in excess of 8 in any 1 day or in excess of 40 in any 1 week.

[fol. 341] *d.* (1) No person under sixteen years of age and no convict labor will be employed by the Contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

(2) No girl under eighteen years of age shall be employed for more than eight hours in any one day, or, between the hours of 10 p. m. and 6 a. m., or in any way contrary to state laws governing hours of work.

(3) No girl under eighteen years of age shall be employed in any operation or occupation which, under the Fair Labor Standards Act or under any state law or administrative ruling, is determined to be hazardous in nature or dangerous to health.

(4) For every girl under eighteen years of age employed by him the Contractor shall obtain and keep on file a certificate of age showing that such girl is at least sixteen years of age.

(5) A specific and definite luncheon period of at least 30 minutes shall be regularly granted any women workers under eighteen years of age.

(6) No girl under eighteen years of age shall be employed at less than the minimum hourly rate set by or under the Fair Labor Standards Act or the Walsh-Healey Public Contracts Act for the industry in which the exemption is granted.

C. Change Paragraph c. of Section 1 and change Section 4 of Article V-A of Title V to read:

c. Transportation, loading, unloading and storage charges on materials, supplies and equipment, including expenses of removing rejected property under Article VII-C, Title VII hereof.

4. The Government reserves the right to pay directly to the persons concerned including the subcontractors referred to in paragraph b of Section 2 of Article I-V of Title I: all sums due from the Contractor for labor, materials, or other charges. The Government will pay directly for all telegraphic communications (including teletype and facsimile when authorized by the Contracting Officer to be installed), cablegrams, radiograms, and similar messages that may be sent by the Contractor pertaining directly to the contract for work to be done or materials to be furnished thereunder, and the Contractor is hereby designated as an agent of the Government only for the purpose of causing the transmittal of any such messages.

D. Change Article VII-C of Title VII to read:

Title to all materials, tools, machinery, equipment and supplies for which the Contractor shall be entitled to re-

imbursement under this contract shall vest in the Government at such point or points as the Contracting Officer may designate in writing, provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further, that upon such final inspection, the Contractor shall be given written notice of acceptance or rejection as the case may be. In the event of rejection, the Contractor shall be responsible for the removal of the rejected property within a reasonable time.

E. Change Section 4 of Article VII-E of Title VII and add Section 5 to said Article VII to read:

4. In order to avoid so far as possible duplication in accounting and auditing functions performed by the Contractor and the Government it is agreed that the following accounting and auditing functions shall be performed by the Government exclusively:

a. Time checking (not timekeeping) in the field or in the plant.

b. Audit of original pay rolls of the Contractor (or such portions thereof as are applicable) where such pay rolls are prepared by the Contractor.

c. Checking of equipment rentals and the preparation and delivery of properly approved rental rolls to the Contractor for payment.

d. Such other accounting and auditing functions as may be effectively performed by Government employees and to which the Contracting Officer and the Contractor may mutually agree in writing.

5. It is further agreed that if any of the accounting and auditing functions performed exclusively by the Government do not adequately discharge such accounting and auditing functions to the satisfaction of the Contractor, the Contractor, with the approval in writing of the Contracting Officer, may perform such additional checking and auditing as may be so approved. The Contractor shall be reimbursed for the cost of such additional accounting and auditing functions as are so approved.

F. Chance Section 1 of Article VII-F of Title VII and add Section 8 to said Article VII-F to read:

1. Procure and thereafter maintain such bonds and insurance in such forms and in such amounts and for such periods of time as the Contracting Officer may approve or require in writing. Such bond or insurance policy shall contain an indorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

8. *Renegotiation Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942.*

a. The Contractor will include in each fixed-price or lump-sum subcontract made under this contract for an amount in excess of \$100,000, the following provisions:

"Article —. *Renegotiation Pursuant to Section 403 of [fol. 343] the Sixth Supplemental National Defense Appropriation Act, 1942.*

"(1) Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to — — (subcontractor) under this contract can be determined with reasonable certainty, the Secretary and — — (subcontractor) will renegotiate the contract price to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for the commencement thereof not later than one year after the date of completion or termination of this contract as found by the Secretary.

"(2) — — (subcontractor) will furnish to the Secretary such statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

"(3) Any amount of the contract price found as a result of such renegotiation to represent excessive profits shall as directed by the Secretary—

(a) Be deducted by — — (Contractor) from payments otherwise due to — — (subcontractor) under this contract; or

(b) Be paid by — — — (subcontractor) directly to the Government.

“(4) — — — (subcontractor) agrees that — — — (Contractor) shall not be liable to — — — (subcontractor) for or on account of any amount paid to the Government by — — — (subcontractor) or deducted by — — — (Contractor) from payments otherwise due under this contract, pursuant to directions from the Secretary in accordance with the provisions of this Article. Under its contract with the Government, — — — (Contractor) is obligated to pay or credit to the Government all amounts withheld by it from — — — (subcontractor) hereunder.”

“(5) As used in this Article—

(a) The term ‘Secretary’ means the Secretary of War or any duly authorized representative of the Secretary, including the Contracting Officer.

(b) The terms ‘renegotiate’ and ‘renegotiation’ have the same meaning as in Section 403 (b) of the Sixth Supplemental National Defense Appropriation Act, 1942.

(c) The term ‘this contract’ means this contract as modified from time to time.”

b. In any such subcontract by which the subcontractor undertakes to supply to the Contractor the same article or articles which the Contractor is required to deliver to the Government under this contract, the Contractor will also include, in addition to sections (1) to (5) required by section a, the following provisions:

[fol. 344] “(6) — — — (subcontractor) agrees (a) to include in each fixed-price or lump-sum subcontract hereunder for an amount in excess of \$100,000 the foregoing sections (1) to (5) inclusive, and (b) to make no subdivisions of any of any contract or subcontract for the purpose of evading the provisions of this section, and (c) to repay to the Government the amount of any reduction in the contract price of any such contract which results from renegotiation thereof by the Secretary and which the Secretary directs, — — — (subcontractor) to withhold from payments otherwise due under such contract and actually unpaid at the time — — — (subcontractor) receives such direction.”

c. (1) The Contractor agrees to make no subdivision of any contract or subcontract for the purpose of evading the provisions of this Article.

(2) If any renegotiation between the Secretary and any subcontractor pursuant to the provisions required by section *a.* hereof results in a reduction of the contract price of the subcontract, the Government shall retain from payments otherwise due to the Contractor under this contract, or the Contractor shall repay to the Government, as the Secretary may direct, the amount of such reduction which the Secretary directs the Contractor to withhold from payments otherwise due to the subcontractor under the subcontract and actually unpaid at the time the Contractor received such direction.

d. As used in this Article—

(1) The term "Secretary" means the Secretary of War or any duly authorized representative of the Secretary, including the Contracting Officer.

(2) The term "subcontract" includes any purchase order form, or any agreement with, the Contractor (*a*) to perform all or any part of the work to be done under this contract, or to make or furnish all or any part of any articles or structures covered by this contract, (*b*) to supply any services required directly for the production of any articles or structures covered by this contract, or any component part thereof, not including services for the general operation of the Contractor's plant or business, (*c*) to make or furnish any articles destined to become a component part of any article covered by this contract, or (*d*) to make or furnish any articles acquired by the Contractor primarily for the performance of this contract, or this contract and any other contract with the United States. The term "articles" includes any supplies, materials, machinery, equipment or other personal property.

(3) The terms "renegotiate" and "renegotiation" have the same meaning as in Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942.

(4) The term "this contract" means this contract as modified from time to time.

G. Change Article VII-R of Title VII to read:

1. The Contractor, in performing the work required by this contract shall not discriminate against any worker because of race, creed, color or national origin.

[fol. 345] 2. The Contractor agrees that subparagraph 1 above will be inserted in all its subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the Contractor with any individual, partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work to be performed in connection with the supplies or services furnished under this contract; provided, however, that a contract for the furnishing of standard or commercial articles or raw material shall not be considered as a subcontract.

H. Change Article VII-S of Title VII to read:

1. The term "Chief of Branch" refers to the Chief of Ordnance, or The Chief of Engineers.

2. The terms "Secretary of War" or "Chief of Branch" shall include their duly authorized representatives as the case may be other than the Contracting Officer.

3. For the original signing of this Contract, the term "Contracting Officer" as used herein shall be deemed to include the Contracting Officer appointed by the Quartermaster General and the Contracting Officer appointed by the Chief of Ordnance. For any modification of this Contract, the term "Contracting Officer" as used herein shall be deemed to include the Contracting Officer in the Office of the Chief of Engineers appointed for that purpose by the Chief of Engineers and the Contracting Officer appointed by the Chief of Ordnance. For all other purposes the term "Contracting Officer" shall mean the District Engineer of the United States Engineer District in which the Contract work is being performed, his successor or duly authorized representative; or the Contracting Officer appointed by the Chief of Ordnance, his successor or duly authorized representative.

4. The term "Contracting Officer" when used in connection with the approval of performance of construction work of the entire project, and in connection with the approval of

preparation of detailed plans and working drawings for roads, railroads, sewage systems, water systems, electrical generating plants and transmission lines, heating plant, non-manufacturing buildings, such as offices, general warehouses and garages, and such miscellaneous construction as may be requested by the Chief of Ordnance; refers to the District Engineer of the United States Engineer District in which the Contract work is being performed, his successor or duly authorized representative; and when used in connection with any other phase of the work to be performed under this contract the term "Contracting Officer" refers to the Contracting Officer appointed by the Chief of Ordnance, or to his successor or duly authorized representative.

I. The provisions of this first Supplemental Contract shall be operative from and after its date of final approval.

J. Except as herein provided, the terms and conditions of the Original Contract shall continue in full force and effect and shall apply with equal force to this supplemental agreement.

K. This supplemental contract shall be subject to the written approval of the Chief of Ordnance and shall not be binding until so approved.

L. The following alterations were made in this supplemental contract before it was signed by the parties hereto: The words "as heretofore modified" were deleted from Paragraph J on Page 8.

[fol. 346] In Witness Whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

The United States of America, by (S.) Rosswell E. Hardy, J.J.McI, Brig. Gen., Ord. Dept. (Contracting Officer Appointed by the Chief of Ordnance), by (S.) O. P. Easterwood, Jr., Capt., C. of E. (Contracting Office Appointed by the Chief of Engineers); Lone Star Defense Corporation (Contractor), by (S.) T. G. Graham, Vice President, 500 S. Main St., Akron, Ohio (Business Address).

Two Witnesses as to Execution by the Contractor: (S.) G. T. Kimon, 180 N. Portage Path., Akron, Ohio (Address); (S.) Jérôme Taylor, 574 Morley Avenue, Akron, Ohio (Address).

I, S. M. Jett, certify that I am the Secretary of the Corporation named as Contractor herein; that T. G. Graham who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(S.) S. M. Jett. (Corporate Seal.)

[fol. 347]

Consent of Surety

To Supplemental Contract No. 1 dated September 16, 1942 in connection with Contract W-ORD-516 DA-W-ORD-3 between the United States of America and the Lone Star Defense Corporation.

Consent of Surety is hereby given to the foregoing Supplemental Agreement, and the Surety agrees that its performance bond executed in connection with said Contract W-ORD-516 DA-W-ORD-3 shall apply to and cover the due performance of the Contract as so modified.

In Witness Whereof, the undersigned Surety has executed this instrument under its seal this 16th day of September, 1942.

The B. F. Goodrich Company, Surety, by (S.) T. G. Graham. (Corporate Seal.)

Attest: (S.) S. M. Jett.

Certificate as to Corporate Surety

I, S. M. Jett, certify that I am the Secretary of the corporation named as surety in the above Consent of Surety; that T. G. Graham, who signed the said Consent of Surety on behalf of the surety, was then Vice President of said corporation; that I know his signature; that his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

(S.) S. M. Jett. (Corporate Seal.)

[fol. 348] Due to change in identification system of modifications to contracts this Change Order is numbered 2, there being in existence Supplement 1.

Date: April 21, 1943

Change Order No. 2

Contract No. W-ORD-516

DA-W-ORD-3, as Amended

War Department—Ordnance Department

Change Order to Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation, Contract

Contractor: Lone Star Defense Corporation, Akron, Ohio

Name and Location of Plant: Lone Star Ordnance Plant,
Near Texarkana, Texas

Pursuant to the provisions of Article VII-B of Title VII of Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, the following additional instructions are hereby issued:

The Contractor shall, as directed by the Contracting Officer, permit the Federal Works Agency to install, operate and maintain a water connection with the water system of the Plant, at such point or points and under such terms and conditions as may be designated by the Contracting Officer, for the purpose of serving the housing development of the Federal Public Housing Authority located near the Plant site and identified as "N. H. A. Texas -41142". It is expressly understood and agreed by and between the parties hereto that the foregoing is deemed to be part of the work under said Contract W-ORD-516 DA-W-ORD-3, as amended.

There is no change in the estimated cost of Contractor's services under said Contract and no change is made in the fixed-fees. No change in the time required for performance is involved.

Except as hereby changed, the terms and conditions of the contract as heretofore amended shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 2.

The United States of America, (S.) Otto M. Jank,
Colonel, Ordnance Department, Contracting Officer,
J.J.McI.

Receipt is hereby acknowledged of the above Change Order No. 2 to Contract No. W-ORD-516 DA-W-ORD-3, as amended, dated July 23, 1941, and the Contractor hereby accepts the terms and conditions thereof.

Date May 14, 1943.

Lone Star Defense Corporation (Contractor), by
(S.) T. G. Graham, Vice President, JCIF, LXV.
(Seal.)

[fol. 349] Due to change in identification system of modifications to contracts this Change Order is numbered 3, there being in existence Supplement 1 and Change Order 2.

Date: June 29, 1943. Change Order No. 3. Contract No. W-ORD-516. DA-W-ORD-3, as Amended.

War Department—Ordnance Department

Change Order to Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Name and Location of Plant: Lone Star Ordnance Plant,
Texarkana, Texas.

1. Pursuant to the provisions of Article VII-B of Title VII of Contract No. W-ORD-516 DA-W-ORD-3 dated July 23, 1941, as amended, the following additional instructions are hereby issued.

a. The Contractor shall, as directed by the Contracting Officer's Representative, transport or cause to be transported, by subcontract or otherwise, any of the products of said Plant to such points within the continental United States as may be designated. The Contractor shall be reimbursed for its expenditures in performance of the work

required under this paragraph in accordance with the provisions of Article V-A of Title V of Contract No. W-ORD-516 DA-W-ORD-3, as amended.

2. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract No. W-ORD-516 DA-W-ORD-3, as amended.

3. There is no appreciable change in the estimated cost of the Contractor's services under said Contract and no change is made in the fixed-fee. No change in the time required for performance is involved.

4. Except as hereby changed, the terms and conditions of the Contract as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 3.

The United States of America, by (S.) Raymond Rebsamen, Lt. Col., Ord. Dept., Executive Officer, Field Director of Ammunition Plants (Contracting Officer Appointed by the Chief of Ordnance), J.J.McL.

Receipt is hereby acknowledged of the above Change Order No. 3 to Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: July 22, 1943.

Lone Star Defense Corporation (Contractor), by
(S.) G. W. Vaught, Vice President, GTK. (Seal.)

[fol. 350] Due to change in identification system of modifications to contracts this Change Order is numbered 4, there being in existence Supplement 1, and Change Orders 2 and 3.

Date: July 9, 1943. Change Order No. 4. Contract No. W-ORD-516. DA-W-ORD-3, as Amended.

War Department—Ordnance Department

Change Order to Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Name and Location of Plant: Lone Star Ordnance Plant, Texarkana, Texas.

1. Pursuant to the provisions of Article VII-B of Title VII of Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, the following additional instructions are hereby issued:

a. It is recognized that property (including without limitation machine tool and processing equipment, manufacturing aids, raw, manufactured, scrap and waste materials), title to which is or may hereafter become vested in the Government, will be used by or will be in the care, custody or possession of the Contractor in connection with his performance of this contract. *Therefore*, at the direction of the Contracting Officer, the Contractor shall transfer or otherwise dispose of such Government-owned property to such parties and upon such terms and conditions as the Contracting Officer may approve or ratify. The proceeds of such transfers and dispositions shall be applied in reduction of the cost of the work under this contract.

b. Section 4 of Article V-A of Title V is changed to read:

4. The Government reserves the right to pay directly to the persons concerned including the subcontractors referred to in paragraph *b.* of Section 2 of Article I-B of Title I: all sums due from the Contractor for labor, materials, or other charges.

2. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract No. W-ORD-516 DA-W-ORD-3, as amended.

3. There is no appreciable change in the estimated cost of the Contractor's services under said Contract and no change is made in the fixed-fee. No change in the time required for performance is involved.

4. Except as hereby changed, the terms and conditions of the Contract as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 4.

The United States of America, by (S.) Raymond Rebsamen, Lt. Col., Ord. Dept., Executive Officer, Field Director of Ammunition Plants (Contracting Officer Appointed by the Chief of Ordnance), JJMcI.

[fol. 351] Receipt is hereby acknowledged of the above Change Order No. 4 to Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: July 22, 1943.

Lone Star Defense Corporation (Contractor), by
(S.) G. W. Vaught, Vice President, GTK. (Seal.)

[fol. 352] Due to change in identification system of modifications to contracts this Change Order is numbered 5, there being in existence Supplement 1, and Change Orders 2, 3 and 4.

Date: January 6, 1944. Change Order No. 5. Contract No. W-ORD-516. DA-W-ORD-3, as Amended.

War Department—Ordnance Department

Change Order to Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Name and Location of Plant: Lone Star Ordnance Plant, Texarkana, Texas.

1. Pursuant to the provisions of Article VII-B of Title VII of Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, the following additional instructions are hereby issued:

a. With the approval of the Contracting Officer, the Contractor may modify a subcontract or purchase order under Contract No. W-ORD-516 DA-W-ORD-3, as amended, to

increase the price or extend more favorable terms to the Subcontractor.

2. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract W-ORD-516 DA-W-ORD-3, as amended, and the Contractor shall be reimbursed for any payments made pursuant thereto.

3. There is no appreciable change in the estimated cost of the Contractor's services under said Contract and no change is made in the fixed fee. No change in the time required for performance is involved.

4. Except as hereby changed, the terms and conditions of the Contract as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 5.

The United States of America, by (S.) Raymond Rebsamen, Lt. Col., Ord. Dept., Executive Officer, Field Director Ammunition Plants (Contracting Officer Appointed by the Chief of Ordnance), JJMcI.

Receipt is hereby acknowledged of the above Change Order No. 5 to Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: January 12, 1944:

Lone Star Defense Corporation (Contractor), by
(S.) A. Kelly, Vice President, GTK. (Seal.)

[fol. 353] Due to change in identification system of modifications to contracts this Change Order is numbered 6, there being in existence Supplement 1, and Change Orders 2, 3, 4 and 5.

Parsons/dp. Date: January 19, 1944. Change Order No. 6. Contract No. W-ORD-516. DA-W-ORD-3, As Amended.

War Department—Ordnance Department

Change Order to Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Name and Location of Plant: Lone Star Ordnance Plant, Texarkana, Texas.

1. Pursuant to the provisions of Article VII-B of Title VII of Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, the following additional instructions are hereby issued.

a. You are hereby authorized and directed, with the approval of the Contracting Officer, to do all things necessary or incident to operating the Ammonia Nitrate Crystallizing facilities of the Plant to crystallize Ammonium Nitrate solution, and to coat same in accordance with the process hereby referred to as the Tennessee Valley Authority process, including, without limiting the generality of the foregoing, the reworking and coating of Ammonium Nitrate now in storage, the training of personnel incident thereto at Tennessee Valley Authority's plant or elsewhere, and the loading of same on cars in bags ready for shipment.

2. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract W-ORD-516 DA-W-ORD-3, as amended.

3. There is an appreciable change in the estimated cost of the Contractor's services under said Contract but no change is made in the fixed-fee. No change in the time required for performance is involved.

4. Except as hereby changed, the terms and conditions of the Contract as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 5.

The United States of America, by (S.) Raymond Rebsamen, Lt. Col., Ord. Dept., Executive Officer, Field Director Ammunition Plants (Contracting Officer appointed by the Chief of Ordnance), P.G.P.

Receipt is hereby acknowledged of the above Change Order No. 6 to Contract W-ORD-516 DA-W-ORD-3, dated

July 23, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: January 29, 1944.

Lone Star Defense Corporation (Contractor), by
(S.) A. Kelly, Vice President, GTK. (Seal.)

[fol. 354] Due to change in identification system of modifications to contracts this Change Order is numbered 7, there being in existence Supplements 1 and 6 and Change Order 2, 3, 4 and 5.

Parsons/nl. Date: October 12, 1943. Change Order No. 7. Contract No. W-ORD-516. DA-W-ORD-3, As Amended.

War Department—Ordnance Department

Change Order to Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Name and Location of Plant: Lone Star Ordnance Plant, Texarkana, Texas.

1. Pursuant to the provisions of Article VII-B of Title VII of Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, the following additional work is hereby ordered and directed:

a. The Contractor is hereby authorized and shall, as directed by the Contracting Officer, perform at the Navajo Ordnance Depot, Bellemont, Arizona, all work necessary or incident to the reworking or renovating of approximately 33,000 clusters (AN—M4, of 3 23 lb. fragmentation bombs AN—M40) located at the Navajo Ordnance Depot. The Contractor is authorized to use the existing facilities at the said Navajo Ordnance Depot in connection with the reworking or renovating of said clusters. It is understood and agreed that the Contractor is authorized to use the personnel at the Plant in connection with the work hereby ordered and that it will be necessary to transport said personnel to and from the Plant and said Navajo Ordnance Depot and to maintain said personnel at the Navajo Ordnance Depot during the period of said work.

2. It is expressly understood that the foregoing is deemed to be a part of the work under said Contract W-ORD-516 DA-W-ORD-3, as amended.

3. There is no appreciable change in the estimated cost of the Contractor's services under said Contract and no change is made in the fixed-fee. It is estimated that the period of time required for the performance of this additional work will be approximately two (2) months. It is expressly understood, however, that neither the Contractor nor the Government guarantees the correctness of this estimate.

4. Except as hereby changed, the terms and conditions of the Contract as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 7.

The United States of America, by (S.) Raymond Rebsamen, Lt. Col., Ord. Dept., Exec. Off., Field (Director Ammunition Plts. (Contracting Officer appointed by the Chief of Ordnance), J.J.McI.

Receipt is hereby acknowledged of the above Change Order No. 7 to Contract W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: October 30, 1943.

Lone Star Defense Corporation, by (S.) A. Kelly,
Vice President, AK. (Seal.)

[fol. 355] Due to change in identification system of modifications this Supplement is numbered 8, there being in existence Supplement 1 and Change Orders 2, 3, 4, 5, 6 and 7.

Contract No. W-ORD-516. DA-W-ORD-3. Supplement 8.

Supplemental Contract to Cost-Plus-a-Fixed-Fee
New Ordnance Facility

Construction and Operation Contract

War Department

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Place: Near Texarkana, Texas.

Approved: May 5, 1944. L. H. Campbell, Jr., Major General, Chief of Ordnance, VCR.

By (S.) E. P. Russell, Lt. Col., Ord. Dept.

Supplemental Contract for: Authorizing renovation of ammunition and modification of subcontracts and purchase orders; modification of clauses pertaining to the furnishing of explosives and material by the Government, Walsh-Healey Act, travel, overhead payments, office expense, insurance, renegotiation, convict labor, disputes, anti-discrimination, and definitions.

No change is made in the Estimated Cost or Fixed-Fees by this Supplement.

Payments to be made by Finance Officer, U. S. Army at Fort Sam Houston, Texas.

The new Ordnance facility, services and supplies to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same:

5-27030 P210 A 210/40141. 5-27031 P210 A 210/40141.
5-50177 P510 A 21-111/40025. 5-50178 P531 A 21-111/40025.
5-22569 P120 A 212/41005.

This Supplemental Contract is authorized by and negotiated pursuant to the following laws: The Act approved July 2, 1940 (Public No. 703, 76th Cong.), as extended, the Act of March 11, 1941 (Public Law 11, 77th Cong.), as extended, the Act approved December 18, 1941 (Public Law 354, 77th Cong.) and Executive Order No. 9001 dated December 27, 1941.

(S.) Raymond Rebsamen, Lt. Col., Ord. Dept., Executive Officer, Field Director of Ammunition Plants, Contracting Officer.

[fol. 356] Supplemental Contract

This Supplemental Contract, entered into this 24th day of March, 1944 by the United States of America, hereinafter called the Government, represented by the Contracting Officers executing this contract, and Lone Star Defense Corporation, a corporation organized and existing under the laws of the State of Ohio, of the City of Akron, in the State of Ohio, hereinafter called the Contractor, Witnesseth That:

Whereas, there is now in force between the parties hereto a certain contract identified by the Government as Contract No. W-ORD-516 DA-W-ORD-3 and being hereinafter sometimes referred to as the "Original Contract"; and

Whereas, said Original Contract has been amended by Supplemental Contract dated September 16, 1942, identified by the Government as Contract No. W-ORD-516 DA-W-ORD-3, Supplement No. 1, and by Change Orders No. 2, 3, 4, 5, 6 and 7, dated April 21, 1943, June 29, 1943, July 9, 1943, January 6, 1944, January 19, 1944 and October 12, 1943, respectively; and

Whereas, the Government now desires to further modify the Original Contract, as amended, to authorize the renovation of ammunition; to modify subcontracts and purchase orders; and to change the clauses pertaining to the furnishing of explosives and materials by the Government, Walsh-Healey Act, travel, overhead payments, office expense, insurance, renegotiation, convict labor, disputes, anti-discrimination, and definitions; and

Whereas, the Contractor has agreed to such modifications upon the terms, conditions and provisions hereinafter set out; and

Whereas, the accomplishment of the above described work under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations the Secretary of War has directed that the Government enter into a Supplemental Contract with the Contractor for the accomplishment of the above described work; and

Whereas, it has been administratively determined that the above described modifications will facilitate the prosecution of the war;

Now, Therefore, the parties hereto do mutually agree that the Original Contract, as amended, shall be and is hereby modified in the following particulars:

[fol.357] A. Section 6 of Article IV-A of Title IV is changed to read:

6. a. The Government shall furnish all explosives, including Neutral Nitrate of Ammonia solution for the manufacture of Nitrate of Ammonia, and shall furnish all metal parts for the loading of the ammunition, except such metal parts as may be readily procurable and as the Contracting Officer may direct the Contractor to furnish. The Contractor will furnish all packing and shipping materials except returned shipping containers and such other materials as the Government may elect to furnish. The foregoing explosives, materials and parts to be furnished by the Government will be delivered f.o.b. said Plant in sufficient quantities, except as otherwise provided herein, to enable the Contractor to carry on the operation of the Plant provided for in this Title IV. The Contractor is authorized, however, with the approval of the Contracting Officer, to recondition, renovate or modify, by subcontract or otherwise, any metal parts or components so furnished hereunder.

b. The Contractor shall accept, handle and store, within the storage capacity of the Plant not immediately necessary for use in connection with the operation of the Plant, such materials and explosives as it may be directed from time to time by the Contracting Officer; provided, that the Government shall remove or cause to be removed any materials or explosives so stored whenever the storage capacity so utilized becomes necessary to the operation of the Plant, and provided, further, that the Contractor shall be under no obligation to accept or store or permit to be stored at said Plant, any explosives which would render the work to be done by the Contractor hereunder hazardous beyond what is usual in the normal operation of a Plant of the type provided for herein.

B. Section 7 of Article IV-A of Title IV is changed to read:

7. a. In carrying out the work under this Title IV the Contractor is authorized to and shall do all things necessary or convenient in the operating and closing down of the Plant, or any part thereof including (but not limited to) the employment of all persons engaged in the work hereunder (who

shall be subject to the control and constitute employees of the Contractor), the providing of all materials and supplies except such as the Government is to furnish or supply as elsewhere specifically provided herein, the storage of materials and supplies and of the finished products to the extent of the storage facilities at said Plant, the preparation of the product for shipment and the loading of same on cars or other carriers in accordance with the Government's shipping instructions.

b. The Contractor shall, as directed by the Contracting Officer, transport or cause to be transported, by subcontract or otherwise, any of the products of said Plant to such points within the continental United States as may be designated.

c. It is recognized that property (including without limitation machine tool and processing equipment, manufacturing aids, raw, manufactured, scrap and waste materials), title to which is or may hereafter become vested in the Government, will be used by or will be in the care, custody or possession of the Contractor in connection with the performance of this contract. With the approval in writing of the Contracting Officer (whether such approval is given prior to or after the giving of a notice of the termination of this contract for the convenience of the Government), the Contractor may transfer or otherwise dispose of such Government-owned property to such parties and upon such terms and conditions as the Contracting Officer may approve or ratify, or, with like approval by the Contracting Officer, the Contractor may itself acquire title to [fol. 358] such property or any of it at a price mutually agreeable. The proceeds of any such transfer or disposition or the agreed price of any property, title to which is so acquired by the Contractor, shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be paid in such manner as the contracting Officer may direct.

d. With the approval of the Contracting Officer, the Contractor may modify a subcontract or purchase order under this contract to increase the price or extend more favorable terms to the subcontractor.

e. The Contractor shall, from time to time with the approval of the Contracting Officer, do all things necessary or incident to operating the Ammonia Nitrate Crystallizing

facilities of the Plant to crystallize Ammonium Nitrate solution, and to coat same in accordance with the process hereby referred to as the Tennessee Valley Authority process, including, without limiting the generality of the foregoing, the reworking and coating of Ammonium Nitrate now in storage, the training of personnel incident thereto at Tennessee Valley Authority's plant or elsewhere, and the loading of same on cars in bags ready for shipment. Nothing in this paragraph e. shall be construed as requiring the Contractor to operate said Ammonium Nitrate facilities beyond the period the Contractor is operating the Plant.

f. The Contractor shall, as directed by the Contracting Officer, permit the Federal Works Agency to install, operate and maintain a water connection with and to the water system of the War Department at the Plant at such point or points and under such terms and conditions as may be designated by the Contracting Officer, for the sole and only purpose of serving the War Housing Development of the Federal Public Housing Authority located near the site of the Plant, consisting of approximately 800 dwelling units and all community and project buildings connected therewith and located near said Plant in Bowie County, Texas (NHA identification No. Texas 41142) and the community of Hooks, Texas.

g. The Contractor is hereby authorized and shall, as directed by the Contracting Officer, perform at the Navajo Ordnance Depot, Bellemont, Arizona, all work necessary or incident to the reworking or renovating of approximately 33,000 clusters (AN—M4, of 3 23 lb. fragmentation bombs AN—M40) located at the Navajo Ordnance Depot. The Contractor is authorized to use the existing facilities at the said Navajo Ordnance Depot in connection with the reworking or renovating said clusters. It is understood and agreed that the Contractor is authorized to use the personnel at the Plant in connection with the work hereby ordered and that it will be necessary to transport said personnel to and from the plant and said Navajo Ordnance Depot and to maintain said personnel at the Navajo Ordnance Depot during the period of said work.

h. The Contractor is authorized and shall, in accordance with the instructions of the Contracting Officer, load, renovate or rehabilitate at the Plant any ammunition or its com-

ponents not specifically mentioned herein, in such quantities as may be directed by the Contracting Officer; provided, however, that the Contractor shall not be obligated to load, renovate or rehabilitate any types or quantities of ammunition or its components which the facilities of said Plant may not be capable of loading, renovating or rehabilitating.

[fol. 359] C. Article IV-B of Title IV is changed to read:

Article IV-B—Estimates

It is estimated as of the date of the Original Contract that the cost of the work under Sections 1, 2 and 3 of Article IV-A of this Title IV will be Forty-four Million Six Hundred Ninety Thousand Dollars (\$44,690,000.00), exclusive of the Contractor's fees. It is estimated as of April 21, 1943 that the cost of the work under Section 4 of Article IV-A of this Title IV will be Thirty-seven Million Five Hundred Sixteen Thousand Five Hundred Thirty Dollars (\$37,516,530.00), exclusive of the Contractor's fees. It is expressly understood, however, that neither the Government nor the Contractor guarantees the correctness of these estimates. The estimated total costs set forth above are based upon estimates agreed to by both the Government and the Contractor, copies of which are on file in the Office of the Chief of Ordnance.

D. Article IV-D of Title IV is changed to read:

Article IV-D—Walsh-Healey Act

The representations and stipulations required by Section 1 of the Act of June 30, 1936 (Walsh-Healey Act, Public 846, 74th Congress) to be included in all contracts therein specified shall apply to the operation of the Plant under this Contract and are hereby incorporated and made a part of this Contract for that purpose with the same force and effect as if fully set forth in this Contract, subject to all applicable regulations, determinations, and exemptions of the Secretary of Labor now or hereafter in effect.

E. Paragraph d of Section 1 of Article V-A of Title V is changed to read:

d. Transportation and traveling expenses to and from the site of the Plant of the necessary field forces for the economical and successful prosecution of the work; transporta-

tion and traveling expenses of such other employees (including executive officers after July 22, 1943) of the Contractor, or of the Contractor's parent company, actually incurred in connection with the work under this Contract; and all cost and expenses reimbursed to permanent employees of the Contractor, or of the Contractor's parent company, on account of the transportation of themselves, their families and household goods in connection with their transfer to the Plant and in connection with their transfer from the Plant, regardless of the place from which the particular employee was originally transferred; Provided, however, that the total of the mileage of all employees so transferred hereunder from the Plant for which the Contractor will be reimbursed shall not exceed the total of the mileage of all employees so transferred hereunder to the Plant.

Reimbursement for transportation and traveling expenses will be limited to the cost of transportation including Pullman where necessary and an allowance of Six Dollars (\$6.00) per day in lieu of all other expenses. Transportation by automobile on such required travel shall be reimbursed at the rate of five cents (\$.05) per mile as representing the actual cost of such transportation.

All travel shall be either authorized or approved in writing by the Contracting Officer. Should the Contractor, or any [fol. 360] representative thereof, remain in a travel status in excess of six (6) days at any one time, not including the time consumed in travel, the cost for such excess travel status shall be at the expense of the Contractor, unless otherwise ordered or approved in writing by the Contracting Officer.

F. Paragraphs ~~f~~ and m of Section 1 of Article V-A of Title V are changed to read:

f. Salaries of employees of the Contractor engaged full time directly on the work provided hereunder whether at the Plant or elsewhere. In case the full time of any employee of the Contractor at the Plant or elsewhere (except at the Contractor's home office during the period lump sum payments are being made under either paragraph 1 or 2 of paragraph p of this Section 1) is not applied to the work, his salary shall be included in this item only in proportion to the actual time applied thereto. No person shall be assigned to service by the Contractor as superintendent of operation, chief en-

gineer, chief purchasing agent, chief accountant, or similar position in the Contractor's organization at the Plant, or as principal assistant to any such person, until there has been submitted to and approved by the Contracting Officer a statement of the previous salary, proposed salary, qualifications, and experience of the person selected for such assignment. It is recognized that in transferring men from their regular positions to the Plant, it may be necessary to make some increase in their remuneration, which shall be subject to the approval of the Contracting Officer.

m. Extra compensation to employees, discontinuance wages and charges under welfare and other employee relations plans maintained by the Contractor; Provided, that the Government shall be chargeable therefor only insofar as the same are consistent with the general employee relations policies existing throughout the Contractor's organization, or are incurred pursuant to agreement made as a result of collective bargaining with the representatives of employees, or are expressly authorized in writing by the Contracting Officer.

G. Paragraphs 2 and 3 of paragraph p of Section 1 of Article V-A of Title V are changed to read:

2. The fixed amount of Twenty-five Hundred Dollars (\$2,500.00) per month for each calendar month of operation, payable at the close thereof, subsequent to the commencement of the complete operation provided in Section 3 of Article IV-A of Title IV but not later than six (6) months after the date of the written notice to the Contracting Officer provided in Section 2 of Article IV-A hereof (including continued operation under Section 4 of such Article IV-A) as complete compensation, including all general overhead, for all services performed by the Contractor at its home office in connection with the work under Title III and IV hereof during the period this paragraph 2 is operative, except for the wages, salaries and transportation and traveling expenses of employees of the Contractor who devote full time to the work under such Title III and IV. The initial amount shall be payable at the close of the calendar month during which such operation commences. Provided, however, that this paragraph 2 shall become inoperative on July 22, 1943 and no payments shall accrue hereunder thereafter.

3. Prior to July 22, 1943, the term "full time," for the purposes of paragraphs i and p of this Section 1 of Article V-A, shall be deemed to refer to the time of employment of those employees engaged for at least one full day solely [fol. 361] upon the work under this Contract and who for that time are carried on payrolls separated from the Contractor's payrolls relating to its other business and not to employees of the Contractor engaged part of the day on the work under this Contract and part of a day on the Contractor's other business.

H. Paragraph s is added to Section 1 of Article V-A of Title V to read:

s. Payments made pursuant to paragraph d of Section 7 of Article IV-A of Title IV.

I. Sections 4 and 5 of Article V-A of Title V are changed to read:

4. The Government reserves the right to pay directly to the persons concerned, including the subcontractors referred to in paragraph b of Section 2 of Article I-B of Title I, all sums due from the Contractor for labor, materials, or other charges.

5. No salaries of the Contractor's executive officers or partners, no part of the expense incurred in conducting the Contractor's main office or regularly established branch offices, and no overhead expenses of any kind of the Contractor's main office or regularly established branch offices, except as specifically authorized in Section 1 of this Article, shall be included in the cost of the work under this contract; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

J. Section 4 of Article V-B of Title V is changed to read:

4. Upon completion of the work under Titles I and II and its final acceptance in writing by the Contracting Officer, and again upon the completion of the work under Title IV, the Government shall pay to the Contractor the unpaid balance of the cost of the work determined under Title V hereof, and of the fees, less any sum that may be necessary to settle any unsettled claims for labor or materials, or any claim the Government may have against the Contractor. The

Contracting Officer shall accept or reject the completed work with reasonable promptness. The Contractor shall, if required, furnish the Government with a release of all claims against the Government arising under and by virtue of this contract other than such claims if any, as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein and other than any claims based on or arising out of liability of the Contractor to third parties subsequently determined to have been incurred in the performance of this contract and not known to the Contractor at the time of furnishing the foregoing release.

K. Section 4 of Article VII-E of Title VII is changed to read:

4. The accounting, auditing and checking functions required in connection with this Contract shall be performed by the Contractor, except that by mutual agreement the functions of accounting, auditing and checking which are required to be performed by the Government auditors as a pre-requisite to reimbursement of the Contractor shall be coordinated as far as possible in order to avoid unnecessary duplication of such functions.

L. Sections 1 and 8 of Article VII-F of Title VII are changed to read:

1. a. Procure and thereafter maintain such bonds and insurance in such forms and in such amounts and for such [fol. 362] periods of time as the Contracting Officer may require, provided same are obtainable. Such bond or insurance policy shall contain an indorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

b. The Contractor shall give the Contracting Officer or his representative prompt notice in writing of any suit or action filed against the Contractor arising out of the performance of this Contract and of any claim against the Contractor the cost and expense of which are reimbursable under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of insurance coverage. The Contractor shall furnish promptly

to the Contracting Officer copies of all pertinent papers received by the Contractor. Insofar as the following shall not conflict with any policy or contract of insurance, and upon request of the Contracting Officer, the Contractor shall do any and all things to effect an assignment and subrogation in favor of the Government of all Contractor's rights and claims, except against the Government, arising from or growing out of such asserted claims. If required by the Contracting Officer in such case, the Contractor shall authorize representatives of the Government to settle and/or defend any such claim and to represent or take charge of any such litigation affecting the Contractor, and thereafter the Government shall be solely responsible for the handling of such litigation and for any settlement made or judgment rendered therein.

c. The Contractor agrees that it will incorporate by reference in each cost-plus-a-fixed-fee subcontract made hereunder subsequent to the approval date of the Eighth Supplement to this Contract, the terms and conditions of this prime contract regarding insurance and liability.

8. Renegotiation pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

a. Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to the Contractor under this contract can be determined with reasonable certainty, the fixed-fees specified in Article IV-C of Title IV hereof will be renegotiated to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for commencement thereof not later than one year after the close of the fiscal year of the Contractor within which completion or termination of the contract, as determined by the Secretary, occurs.

b. The Contractor will furnish to the Secretary such statement of actual costs of production and such other financial statements as are available from the Contractor's books and records, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

c. The Government shall retain from amounts otherwise due the Contractor, or the Contractor shall repay the Government if paid to him, any amount of the fixed-fees specified in Article IV-C found as a result of such renegotiation to represent excessive profits and not eliminated through reductions in fixed-fees specified in Article IV-C or otherwise, as the Secretary may direct.

[fol. 363] d. The Contractor will include in each subcontract described in paragraph f. (2) (ii) of this Article and in each subcontract for an amount in excess of \$100,000 described in paragraph f. (2)(i) of this Article, made by the Contractor under this contract, subsequent to the approval date of the Eighth Supplement to this Contract, the following provision:

"Article — Renegotiation Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

"(1) Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to — — (subcontractor), under this contract can be determined with reasonable certainty, the Secretary and — — (subcontractor), will renegotiate the contract price to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for the commencement thereof not later than one year after the close of the fiscal year of the subcontractor within which completion or termination of the contract, as determined by the Secretary, occurs.

"(2) — — (subcontractor), will furnish the Secretary such statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

"(3) Any amount of the contract price found as a result of such renegotiation to represent excessive profits shall, as directed by the Secretary,—

(a) Be deducted by — — (contractor), from payments otherwise due to — — (subcontractor), under this contract; or

(b) Be paid by ——— (subcontractor), directly to the Government, if paid to him; or

(c) Be eliminated through reductions in the contract price or otherwise.

“(4) ——— (subcontractor), agrees that ——— (contractor), shall not be liable to ——— (subcontractor), for or on account of any amount paid to the Government by ——— (subcontractor), or deducted by ——— (Contractor), from payments otherwise due under this contract, pursuant to directions from the Secretary in [fol. 364] accordance with the provisions of this Article. Under its contract with the Government, ——— (contractor), is obligated to pay or credit to the Government all amounts withheld by it from ——— (subcontractor), hereunder.

“(5) ——— (subcontractor), agrees (a) upon direction of the Secretary, to include in any subcontract hereunder sections (1) to (6) inclusive of this Article, and (b) to make no subdivisions of any contract or subcontracts for the purpose of evading the provisions of this section, and (c) to repay to the Government the amount of any reduction in the contract price of any such subcontract which results from renegotiation thereof by the Secretary, and which the Secretary directs ——— (subcontractor), to withhold from payments otherwise due under such subcontract and actually unpaid at the time ——— (subcontractor), receives such direction.

“(6) As used in this Article,—

(a) The term ‘Secretary’ means the Secretary of War or any duly authorized representative of the Secretary including the Contracting officer.

(b) The term ‘subcontract’ means any purchase order, agreement or arrangement within the definition set forth in Section 403 (a) (5) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, and not exempt under or exempted pursuant to that Act.

(c) The terms ‘renegotiate’ or ‘renegotiation’ have the same meaning as in section 403(b) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(d) The term "this contract" means this contract as modified from time to time."

e. (1) The Contractor agrees to make no subdivisions of any contract or subcontract for the purpose of evading the provisions of this Article.

(2) If any renegotiation between the Secretary and any subcontractor pursuant to the provisions required by Section d hereof results in a reduction of the contract price or fixed-fee of the subcontract, the Government shall retain from payments otherwise due to the Contractor, or the Contractor shall repay to the Government, as the Secretary may direct, the amount of such reduction which the Secretary directs the Contractor to withhold from payments otherwise due to the subcontractor under the subcontract and actually unpaid at the time the Contractor receives such direction.

[fol. 365] f. As used in this Article—

(1) The term "Secretary" means the Secretary of War or any duly authorized representative of the Secretary, including the Contracting Officer.

(2) The term "subcontract" means (i) any purchase order or agreement to perform all or any part of the work, or to make or furnish any materials, part, assembly, machinery, equipment or other personal property, required for the performance of this contract, or (ii) any contract or arrangement (other than a contract or arrangement between two contracting parties one of which parties is found by the Secretary to be a bona fide executive officer, partner, or full-time employee of the other contracting party),

(A) any amount payable under which is contingent upon the procurement of a contract or contracts with a Department or of a subcontract or subcontracts thereunder, or determined with reference to the amount of such a contract or subcontract or such contracts or subcontracts, or

(B) under which any part of the services performed or to be performed consists of the soliciting, attempting to procure, or procuring a contract or contracts with a Department or a subcontract or subcontracts thereunder, unless exempt under or exempted pursuant to Section 403(i) of the Sixth Supplemental National Defense Appropriation Act of 1942, as amended.

(3) The terms "renegotiate" and "renegotiation" have the same meaning as in Section 403(b) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(4) The term "this contract" means this contract as modified from time to time.

M. Article VII-H of Title VII is changed to read:

Article VII-H—Convict Labor

The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor. This provision shall not be construed to prevent the Contractor or any subcontractor hereunder from obtaining any of the supplies, or any component parts or ingredients thereof, to be furnished under this contract or any of the materials or supplies to be used in connection with the performance of this contract, directly or indirectly, from any Federal, State or territorial prison or prison industry; Provided, that such articles, materials or supplies are not produced pursuant to any contract or other arrangement under which prison labor is hired or employed or used by any private person, firm or corporation.

N. Article VII-M of Title VII is changed to read:

Article VII-M—Disputes

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact which may arise under this contract, and which are not disposed of by mutual agreement, shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail a copy thereof to the Contractor at his address shown herein. Within 30 days from said mailing the Contractor may appeal in writing to the Secretary of War, whose written decision or that of his designated representative or representatives thereon shall be final and conclusive upon the parties hereto. The Secretary of War may, in his discretion, designate an individual, or individuals, other than the Contracting Officer, or a board as his authorized representative to determine appeals under this Article. The Contractor shall be afforded an opportunity to be heard and offer evidence in the support of his appeal. The

president of the board, from time to time, may divide the board into divisions of one or more members and assign members thereto. A majority of the members of the board or of a division thereof shall constitute a quorum for the transaction of the business of the board or of a division, respectively, and the decision of a majority of the members of the board or of a division shall be deemed to be the decision of the board or of a division, as the case may be. If a majority of the members of a division are unable to agree on a decision or if within 30 days after a decision by a division, the board or the president thereof directs that the decision of the division be reviewed by the board, the decision will be so reviewed, otherwise the decision of a majority of the members of a division shall become the decision of the board. If a majority of the members of the board is unable to agree upon a decision, the president will promptly submit the appeal to the Under Secretary of War for his decision upon the record. A vacancy in the board or in any division thereof shall not impair the powers, nor affect the duties of the board or division nor of the remaining members of the board or division, respectively. Any member of the board, or any examiner designated by the president of the board for that purpose, may hold hearings, examine witnesses, receive evidence and report the evidence to the board or to the appropriate division, if the case is pending before a division. Pending decision of a dispute hereunder the Contractor shall diligently proceed with the performance of this contract. Any sum or sums allowed to the Contractor under the provisions of this Article shall be paid by the United States as part of the cost of the articles or work herein contracted for and shall be deemed to be within the contemplation of this contract.

§ O. Article VII-R of Title VII is changed to read:

Article VII-R—Anti-Discrimination

1. The Contractor, in performing the work required by this contract, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

2. The Contractor agrees that the provision of Section 1 above will also be inserted in all of its subcontracts executed subsequent to the approval date of the Eighth Supplement

to this Contract. For the purpose of the article a sub-contract is defined as any contract entered into by the Contractor with any individual, partnership, association, corporation, estate, or trust, or with any business enterprise or other legal entity, for a specific part of the work to be performed in connection with the supplies or services furnished under this contract; provided, however, that a contract for the furnishing of standard or commercial articles or raw material shall not be considered as a sub-contract.

P. Article VII-S of Title VII is changed to read:

Article VII-S—Definitions

1. The term "Chief of Branch" refers to either the Chief of Ordnance or to the Chief of Engineers, dependent upon the particular function involved, as described in Section 4 below; and includes any person or board, other than the Contracting Officer, duly authorized to represent them respectively.

2. The term "Secretary of War" includes the Under Secretary of War and any person or board, other than the Contracting Officer, duly authorized to represent the Secretary of War or the Under Secretary of War.

3. For the signing of this contract, the term "Contracting Officer" means both the Contracting Officer in the Office of the Chief of Engineers appointed for that purpose by the Chief of Engineers, and the Contracting Officer appointed by the Chief of Ordnance. For the signing of any modification of this contract, the term "Contracting Officer" means the Contracting Officer appointed by the Chief of Ordnance (or a Contracting Officer designated as the duly authorized representative of the Ordnance Contracting Officer so appointed by the Chief of Ordnance), and, where the modification relates to the functions of the Corps of Engineers as described in Section 4 below, means, in addition, the Contracting Officer in the Office of the Chief of Engineers appointed for that purpose by the Chief of Engineers. For all other purposes, the term "Contracting Officer" refers either to the District Engineer of the United States Engineers District in which the contract work is being performed, or the Contracting Officer appointed by the Chief of Ordnance, dependent upon the particular func-

tion involved as described in Section 4 below; and includes their respective successor or duly authorized representatives.

4. The Corps of Engineers' functions are: Prior to acceptance of the project or any part thereof by the Ordnance Department as the using service, the approval of the performance of all construction work and the acceptance thereof; the approval of the preparation of detailed plans and working drawings for roads, railroads, sewage systems, water systems, electrical generating plants and transmission lines, heating plants, non-manufacturing buildings (such as offices, general warehouses and garages); and the approval of such miscellaneous construction as may be requested by the Chief of Ordnance. The above described Contracting Officers representing the Corps of Engineers, shall have no further authority under the Contract with respect to any part of the project which has been accepted by the using service. The Ordnance Department's functions are: All functions other than the Corps of Engineers' functions set forth in the two preceding sentences.

Q. The provisions of Change Order No. 2 dated April 21, 1943 have been inserted as paragraph *f* of Section 7 of Article IV-A of Title IV; the provisions of Change Order No. 3 dated June 29, 1943 have been inserted as paragraph *b* of Section 7 of Article IV-A of Title IV; paragraph *l.a.* of Change Order No. 4 dated July 9, 1943 has been inserted as paragraph *c* of Section 7 of Article IV-A of Title IV and Paragraph *l.b.* of Change Order No. 4 has been inserted as Section 4 of Article V-A of Title V; the provisions of Change Order No. 5 have been inserted as paragraph *d* of Section 7 of Article IV-A of Title IV; the provisions of Change Order No. 6 have been inserted as paragraph *e* of Section 7 of Article IV-A of Title IV; the provisions of paragraph *l.a.* of Change Order No. 7 dated October 12, 1943 have been inserted as paragraph *g* of Section 7 of Article IV-A of Title IV. Therefore, Change Orders No. 2, 3, 4, 5, 6 and 7 are hereby superseded.

[fol. 368] R. Except as herein provided the terms and conditions of the Original Contract, as amended, shall continue in full force and effect and shall apply with equal force to this Supplemental Contract.

S. This Supplemental Contract shall be subject to the written approval of the Chief of Ordnance or his duly

authorized representative and shall not be binding until so approved.

T. The following alterations were made in this Supplemental Contract before it was signed by the parties hereto:

None.

[fol. 369] In witness whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

The United States of America, by (S.) Raymond Rebsamen, Lt. Col., Ord. Dept., Executive Officer, Field Director of Ammunition Plants (Contracting Officer Appointed by the Chief of Ordnance), J.J. McL, by (S.) O. P. Easterwood, Jr., Major, Corps of Engineers (Contracting Officer Appointed by the Chief of Engineers); Lone Star Defense Corporation (Contractor), by (S.) A. Kelly, Vice President, 500 S. Main Street, Akron, O. (Business Address).

Two witnesses as to Execution by the Contractor: (S.) E. A. Cole, 500 S. Main Street, Akron, O. (Address); (S.) Jerome Taylor, 500 S. Main Street, Akron, O. (Address).

I, S. M. Jett, certify that I am the Secretary of the Corporation named as Contractor herein, that A. Kelly who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(S.) S. M. Jett. (Corporate Seal.)

[fol. 370]

Consent of Surety

To Supplemental Contract No. 8 dated March 24, 1944 in connection with Contract No. W-ORD-516 DA-W-ORD-3 between the United States of America and the Lone Star Defense Corporation.

Consent of Surety, is hereby given to the foregoing Supplemental Agreement, and the Surety agrees that its bond or bonds shall apply to and cover the due performance of the Contract as modified and extended thereby.

In witness whereof, the undersigned Surety has executed this instrument under its seal this 13th day of April, 1944.

The B. F. Goodrich Company, by (S.) Jas. J. Newman, Vice President. (Corporate Seal.)

Attest: (S.) G. T. Kilmon, Assistant Secretary.

Certificate as to Corporate Surety

I, S. M. Jett, certify that I am the Secretary of the corporation named as surety in the above Consent of Surety: that Jas. J. Newman, who signed the said Consent of Surety on behalf of the surety, was then Vice President of said corporation; that I know his signature; and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

S. M. Jett, Secretary. (Corporate Seal.)

[fol. 371] Due to change in identification system of modifications to contracts this Change Order is numbered 9, there being in existence Supplements 1 and 8, and Change Orders 2, 3, 4, 5, 6 and 7.

Parsons/ap. Date: 3 April, 1944. Change Order No. 9. Contract No. W-ORD-516. DA-W-ORD-3, as amended.

War Department—Ordnance Department

Change Order to Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Name and Location of Plant: Lone Star Ordnance Plant, Texarkana, Texas.

1. Pursuant to the provisions of Article VII-B of Title VII of Contract No. W-ORD-516 DA-W-ORD-3, as amended, the following additional work is hereby ordered:

a. The Contractor shall, as directed from time to time by the Contracting Officer, inspect (including x-raying) at the Lone Star Ordnance Plant shells or other ammunition for the Plant or for other Ordnance Facilities. No charge shall be made to any other Ordnance Facility for any such inspection services.

2. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract No. W-ORD-516 DA-W-ORD-3, as amended.

3. There is no appreciable change in the estimated cost of the Contractor's services under said Contract and no change is made in the fixed-fee. No change in the time required for performance is involved.

4. Except as hereby changed, the terms and conditions of the Original Contract, as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order 9.

The United States of America, by (S.) Raymond Rebsamen, Lt. Col., Ord. Dept., Executive Officer, Field Director of Ammunition Plants, Contracting Officer, JJMcI.

Receipt is hereby acknowledged of the above Change Order No. 9 to Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: April 13, 1944.

Lone Star Defense Corporation (Contractor), by (S.) A. Kelly, Vice President.

[fol. 372] Due to change in identification system of modifications to contracts this Change Order is number 10, there being in existence Supplements 1 and 8, and Change orders 2, 3, 4, 5, 6, 7 and 9.

Parsons/ap.

Date: April 7, 1944. Change Order No. 10. Contract No. W-ORD-516. DA-W-ORD-3, as amended.

War Department—Ordnance Department

Change Order to Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

Contractor: Lone Star Defense Corporation, Akron, Ohio.
 Name and Location of Plant: Lone Star Ordnance Plant,
 Texarkana, Texas.

1. Pursuant to the provisions of Article VII-B of Title VII of Contract No. W-ORD-516 DA-W-ORD-3, as amended, the following additional work is hereby ordered:

a. The Contractor is authorized to and shall, as directed from time to time by the Contracting Officer, receive, inspect, assort, screen, segregate, load, renovate, recondition, rehabilitate, destroy, store, load on cars, ship or otherwise handle any ammunition (including components and containers) even though it is not specifically mentioned in this Contract, regardless of its origin, in such quantities as may be directed by the Contracting Officer; provided, however, that the Contractor shall not be obligated to perform any of the services provided for in this paragraph which the facilities of said Plant may not be capable of performing.

2. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under this Contract, as amended, and that the carrying out of said work will be done under and in accordance with the applicable provisions of this Contract, as amended. The Contractor shall not be obligated to perform the work herein provided for beyond the expiration date of this Contract No. W-ORD-516 DA-W-ORD-3, as amended.

3. There is no appreciable change in the estimated cost of the Contractor's services under said Contract and no Change is made in the fixed-fee. No change in the time required for performance is involved.

4. Except as hereby changed, the terms and conditions of this Contract, as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order.

The United States of America, by (S.) Raymond
 Rebsamen, Lt. Col., Ord. Dept., Executive Officer,

Field Director of Ammunition Plants, Contracting
Officer, J.J. McL.

Receipt is hereby acknowledged of the above Change Order No. 10 to Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: June 3, 1944.

Lone Star Defense Corporation (Contractor), by (S.)
A. Kelly, Vice President.

[fol. 373] Due to change in identification system of modifications to contracts this Supplement is numbered 11, there having been executed Supplements 1 and 8, and Change Orders 2, 3, 4, 5, 6, 7, 9 and 10.

Contract No. W-ORD-516. DA-W-ORD-3. Supplement 11.

Supplemental Contract to Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

War Department

Contractor: Lone Star Defense Corporation.

Place: At or near Texarkana, Texas.

Supplemental Contract for: Additional operation (3rd year) and modification of provisions pertaining to fixed-fee, renovation, final payment, transportation and renegotiation.

No change is made in the Estimated Cost or Fixed-fees by this Supplement except:

Estimated Cost under Title IV: (3rd year) \$40,078,500.00.

Fixed-fee under Title IV: (3rd year) 450,000.00.

Payments to be made by Finance Officer, U. S. Army at Fort Sam Houston, Texas.

The New Ordnance Facility, services and supplies to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same:

5-27030 P210 A 210/40141.

5-27031 P210 A 210/40141.

5-50177 P510 A 21-111/40025.

5-50178 P531 A 21-111/40025.

5-22569 P120 A 212/41005.

This Supplemental Contract is authorized by and negotiated pursuant to the following laws: The Act approved July 2, 1940 (Public No. 703, 76th Cong.), as extended, the Act of March 11, 1941 (Public Law 11, 77th Cong.), as extended, the Act approved December 18, 1941 (Public Law 354, 77th Cong.) and Executive Order No. 9001 dated December 27, 1941.

Approved: — —, 1944. L. H. Campbell, Jr. By E. P. Russell, Lt. Col., Ord. Dept.

[fol. 374]

Supplemental Contract

This Supplemental Contract, entered into this 30th day of June, 1944 by the United States of America, hereinafter called the Government, represented by the Contracting Officers executing this contract, and Lone Star Defense Corporation, a corporation organized and existing under the laws of the State of Ohio, of the City of Akron, in the State of Ohio, hereinafter called the Contractor, Witnesseth That:

Whereas, there is now in force between the parties hereto a certain contract identified by the Government as Contract No. W-ORD-516 DA-W-ORD-3 and being hereinafter sometimes referred to as the "Original Contract"; and

Whereas, said Original Contract has been amended by Supplemental Contracts dated September 16, 1942, and March 24, 1944, identified by the Government as Contract No. W-ORD-516 DA-W-ORD-3; Supplements 1 and 8, respectively, and by Change Orders No. 2, 3, 4, 5, 6, 7, 9 and 10, dated April 21, 1943, June 29, 1943, July 9, 1943, January 6, 1944, January 19, 1944, October 12, 1943, April 3, 1944 and April 7, 1944, respectively; and

Whereas, the Government now desires to further modify the Original Contract, as amended, to provide for additional operation (3rd year) and to change the clauses pertaining to fixed-fee, renovation, final payment, transportation and renegotiation.

Whereas, the Contractor has agreed to such modifications upon the terms, conditions and provisions hereinafter set out; and

Whereas, the accomplishment of the above described work under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations the Secretary of War has directed that the Government enter into a Supplemental Contract with the Contractor for the accomplishment of the above described work; and

Whereas, it has been administratively determined that the above described modifications will facilitate the prosecution of the war;

Now Therefore, the parties hereto do mutually agree that the Original Contract, as amended, shall be and is hereby modified in the following particulars:

[fol. 375] A. Section 4 of Article IV-A of Title IV is changed to read:

4. a. Upon written notice to the Contractor not less than ninety (90) days before the anticipated completion of the operation provided for in Section 3 next above, the Government may, at its option, authorize the continued operation of the Plant for an additional period of twelve (12) months, and the Contractor shall undertake such continued operation under the terms and conditions of this contract applicable to the operation of the Plant (including those relating to the fixed-fee for such additional operation, which fee shall be that provided in Section 3 of Article IV-C hereof).

b. Beginning July 22, 1944, the Contractor shall, as directed from time to time by the Contracting Officer, operate the Plant for an additional period of twelve (12) months (July 22, 1944 to July 22, 1945). Any operation after July 21, 1945, shall be subject to mutual agreement after negotiation.

B. Paragraph h of Section 7 of Article IV-A of Title IV is changed to read:

h. The Contractor is authorized to and shall, as directed from time to time by the Contracting Officer, receive, in-

spect (including x-raying), assort, screen, segregate, load, renovate, recondition, rehabilitate, destroy, store, load on cars, ship or otherwise handle any ammunition (including components and containers) even though it is not specifically mentioned in this Contract, regardless of its origin, in such quantities as may be directed by the Contracting Officer; provided, however, that the Contractor shall not be obligated to perform any of the services provided for in this paragraph which the facilities of said Plant may not be capable of performing.

C. Article IV-B of Title IV is changed to read:

Article IV-B—Estimates

It is estimated as of the date of the Original Contract that the cost of the work under Sections 1, 2 and 3 of Article IV-A of this Title IV will be Forty-four Million Six Hundred Ninety Thousand Dollars (\$44,690,000.00), exclusive of the Contractor's fee. It is estimated as of April 21, 1943, that the cost of the work under paragraph *a* of Section 4 of Article IV-A of this Title IV will be Thirty-seven Million Five Hundred Sixteen Thousand Five Hundred Thirty Dollars (\$37,516,530.00), exclusive of the Contractor's fee. It is estimated as of the date of Supplement No. 11 to this Contract that the cost of the work under paragraph *b* of Section 4 of Article IV-A of this Title IV will be Forty Million Seventy-eight Thousand Five Hundred Dollars (\$40,078,500.00), exclusive of Contractor's fee. It is expressly understood, however, that neither the Government nor the Contractor guarantees the correctness of these estimates. The estimated total costs set forth above are based upon estimates agreed to by both the Government and the Contractor, copies of which are on file in the Office of the Chief of Ordnance.

D. Section 3 of Article IV-C of Title IV is changed to read:

3. A fixed-fee for continued operation provided in paragraph *a* of Section 4 of Article IV-A hereof in the amount of Four Hundred Eighty Thousand Dollars (\$480,000.00), which fee shall constitute complete compensation for Contractor's services during such continued operation, includ-

ing profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

[fol. 376] E. Section 4 is added to Article IV-C of Title IV to read:

4. A fixed-fee for the additional operation provided in paragraph *b* of Section 4 of Article IV-A hereof in the amount of Four Hundred Fifty Thousand Dollars (\$450,000.00), which fee shall constitute complete compensation for Contractor's services from July 22, 1944 to July 22, 1945, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

F. Paragraph *c* of Section 1 of Article V-A of Title V is changed to read:

c. Transportation, loading, unloading, demurrage, and storage charges on materials, supplies, and equipment, including expenses of removing rejected property under Article VII-C of Title VII hereof.

G. Paragraph *c* of Section 2 of Article V-B of Title V is changed to read:

c. The fixed-fee provided for in Section 3 of Article IV-C of Title IV shall be paid as follows:

(1) Four Hundred Eighty Thousand Dollars (\$480,000.00) for the operation of the Plant during the additional period of twelve (12) months provided for in paragraph *a* of Section 4 of Article IV-A hereof, payable in twelve (12) monthly installments of Forty Thousand Dollars (\$40,000.00) each, less ten percent (10%) of each installment, the first such installment to be paid thirty (30) days after the beginning of said additional twelve months' period and a like installment to be paid on the same day of each of the next succeeding eleven (11) months.

H. Paragraph *f* is added to Section 2 of Article V-B of Title V to read:

f. The fixed-fee provided for in Section 4 of Article IV-C of Title IV shall be paid as follows:

(1) Four Hundred Fifty Thousand Dollars (\$450,000.00) for the operation of the Plant during the period provided for in paragraph *b* of Section 4 of Article IV-A hereof, payable in twelve (12) equal monthly installments of Thirty-seven Thousand Five Hundred Dollars (\$37,500.00) each, the first such installment to be paid August 22, 1944 and a like installment to be paid on the same day of each of the next succeeding eleven (11) months.

I. Section 4 of Article V-B of Title V is changed to read:

4. Upon completion of the work under Titles I and II, and under Sections 1, 2 and 3 and paragraph *a* of Section 4 of Article IV-A of Title IV, and again upon the completion of the work under paragraph *b* of Section 4 of Article IV-A of Title IV, the Government shall pay the Contractor the unpaid balance of the cost of the work determined under Title V hereof, and of the fees, less any sum that may be necessary to settle any unsettled claims for labor or materials, or any claim the Government may have against the Contractor. The Contracting Officer shall accept or reject the completed work with reasonable promptness. The Contractor shall, if required, furnish the Government with a release of all claims against the Government arising under and by virtue of this contract other than such claims, if any; [fol. 377] as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein, or in estimated amounts where the amounts involved are not susceptible of exact statement, and other than any claims based on or arising out of the liability of the Contractor to third parties subsequently determined to have been incurred in the performance of this contract and not known to the Contractor at the time of furnishing the foregoing release.

J. Section 8 of Article VII-E of Title VII is changed to read:

8. Renegotiation Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

a. This contract shall be deemed to contain all the provisions required by subsection (b) of the Renegotiation Act

as amended by Section 701 of the Revenue Act of 1943 (Public Law No. 235, 78th Congress, enacted February 25, 1944).

b. In compliance with said subsection (b) of the Renegotiation Act, the Contractor shall insert in the subcontracts specified in said subsection (b) which are executed subsequent to the date of this Supplement No. 11 either the provisions of this Section or the provisions required by said subsection (b).

K. The provisions of Change Order No. 9 dated April 3, 1944 and the provisions of Change Order No. 10 dated April 7, 1944, have been inserted in paragraph B herein amending paragraph h of Section 7 of Article IV-A of Title IV. Therefore, Change Orders No. 9 and 10 are hereby superseded.

L. Except as herein provided, the terms and conditions of the Original Contract, as amended, shall continue in full force and effect and shall apply with equal force to this Supplemental Contract.

M. This Supplemental Contract shall be subject to the written approval of the Chief of Ordnance or his duly authorized representative and shall not be binding until so approved.

N. The following alterations were made in this Supplemental Contract before it was signed by the parties hereto:

None.

[fol. 378] In Witness Whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

The United States of America, by (S.) James H. Ellett, Major, Ord. Dept., Executive Officer, Field Director of Ammunition Plants, Contracting Officer, JJMeI; by (S.) Herbert H. Rice, Major, Corps of Engineers (Contracting Officer appointed by the Chief of Engineers), W.M.M., H.H.K.

Two Witnesses as to Execution by the Contractor: (S.)
C. R. Couts, Address: 500 S. Main St., Akron, Ohio; (S.)
E. A. Cole, Address: 500 S. Main St., Akron, Ohio.

Lone Star Defense Corporation (Contractor), by
(S.) A. Kelly, Vice President, GTK, Business Ad-
dress: 500 S. Main St., Akron, Ohio.

I, S. M. Jett, certify that I am the Secretary of the Cor-
poration named as Contractor herein, that A. Kelly who
signed this contract on behalf of the Contractor was then
Vice President of said corporation; that said Contract was
duly signed for and in behalf of said corporation by author-
ity of its governing body and is within the scope of its
corporate powers.

(S.) S. M. Jett, Secretary. (Corporate Seal.)

[fol. 379]

Consent of Surety

To Supplemental Contract No. 11 dated June 30, 1944 in
connection with Contract No. W-ORD-516 DA-W-ORD-3 be-
tween the United States of America and the Lone Star De-
fense Corporation.

Consent of Surety is hereby given to the foregoing Sup-
plemental Agreement, and the Surety agrees that its bond
or bonds shall apply to and cover the due performance of
the Contract as modified and extended thereby.

In Witness Whereof, the undersigned Surety has executed
this instrument under its seal this 30th day of June, 1944.

The B. F. Goodrich Company, by (S.) T. G. Graham,
Vice President, GTK. (Corporate Seal.)

Attest: (S.) S. M. Jett, Secretary.

Certificate as to Corporate Surety

I, S. M. Jett, certify that I am the Secretary of the cor-
poration named as surety in the above Consent of Surety:
That T. G. Graham, who signed the said Consent of Surety
on behalf of the surety, was then Vice President of said
corporation; that I know his signature, and his signature
thereto is genuine; and that said bond was duly signed,
sealed, and attested for and in behalf of said corporation by
authority of its governing body.

(S.) S. M. Jett, Secretary. (Corporate Seal.)

[fol. 380] Due to change in identification system of modifications to contracts, this Change Order is numbered 12, there having been executed Supplements 1 and 8 (Supplement 11 pending), and Change Orders 2, 3, 4, 5, 6, 7, 9 and 10.

Parsons/ap. Date: 19 June 1944. Change Order No. 12. Contract No. W-ORD-516. DA-W-ORD-3, as amended.

War Department—Ordnance Department

Change Order to Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Name and Location of Plant: Lone Star Ordnance Plant, Texarkana, Texas.

1. Pursuant to the provisions of Article VII-B of Title VII of Contract No. W-ORD-516 DA-W-ORD-3, as amended, the following additional work is hereby ordered:

a. The Contractor is authorized to prepare such engineering studies as may be requested or approved by the Contracting Officer.

2. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract No. W-ORD-516 DA-W-ORD-3, as amended.

3. There is no appreciable change in the estimated cost of the Contractor's services under said Contract and no change is made in the fixed-fee. No change in the time required for performance is involved.

4. Except as hereby changed, the terms and conditions of the Original Contract, as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 12.

The United States of America, by (S.) T. C. Gerber,
Colonel, Ord. Dept., Field Director of Ammunition
Plants, Contracting Officer, IEEE.

Receipt is hereby acknowledged of the above Change Order No. 12 to Contract No. W-ORD-516 DA-W-ORD-3,

dated July 23, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: June 20, 1944.

Lone Star Defense Corporation (Contractor), by
(S.) A. Kelly, Vice President. GTK.

[fol. 381] Due to change in identification system of modifications to contracts, this Change Order is numbered 13, there having been executed Supplements 1 and 8 (Supplement 11 pending), and Change Orders 2, 3, 4, 5, 6, 7, 9, 10 and 12.

Parsons/ap. Date: 9 August 1944. Change Order No. 13.
Contract No. W-ORD-516 DA-W-ORD-3, as amended.

War Department—Ordnance Department

Change Order to
Cost-Plus-a-Fixed-Fee
New Ordnance Facility

Construction and Operation Contract

Contractor: Lone Star Defense Corporation, Akron, Ohio.
Name and Location of Plant: Lone Star Ordnance Plant,
Texarkana, Texas.

1. Pursuant to the provisions of Article VII-B of Title VII of Contract No. W-ORD-516 DA-W-ORD-3, as amended, the following additional work is hereby ordered:

a. Pending the preparation and execution of a formal supplement, the Contractor shall furnish such management service, and procure such production equipment as is not furnished by the Government, as may be approved or ratified by the Contracting Officer, as will be required by the modification of a load line (VI) at the Plant to increase capacity for loading 20# cluster fragmentation bombs by 50,000 per month and by the installation of facilities for the reclamation and renovation of 100,000 155mm shell, or equivalent, per month. The Contractor is advised that the construction will be done under the supervision of the Corps of Engineers by collateral contracts.

2. Site letters have been approved covering said work and funds are available therefor. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract No. W-ORD-516 DA-W-ORD-3.

3. This Change Order will involve an appreciable increase in the cost of the work. Therefore, as soon as a detailed estimate is available it will be furnished to the Ordnance Department by the Contractor. It is estimated that the period of time required to perform such work will be approximately three months. Any fixed fee for the foregoing work will be negotiated as a part of said formal supplement.

4. Except as hereby changed, the terms and conditions of the Original Contract, as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 13.

The United States of America, by (S.) Herbert H. Rice, W.M.M., Major, Corps of Engineers, O.F.S. (Contracting Officer appointed by the Chief of Engineers); by (S.) James H. Ellett, Major, Ord. Dept., Executive Officer, Field Director of Ammunition Plants (Contracting Officer appointed by the Chief of Ordnance). JJMcI.

Receipt is hereby acknowledged of the above Change Order No. 13 to Contract No. W-ORD-516 DA W-ORD-3, dated July 23, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: September 21, 1944.

Lone Star Defense Corporation (Contractor), by
(S.) A. Kelly, Vice President. GTK.

[fol. 382] Parsons/ap. Change Order No. 14. Contract No. W-ORD-516. DA-W-ORD-3, as amended.

Army Service Forces
Office of the Chief of Ordnance
Field Director of Ammunition Plants

St. Louis 8, Missouri

12 January 1945

In Reply Refer To: SPOLY-G, Legal Section.

Lone Star Defense Corporation,
500 S. Main Street,
Akron, Ohio.

Re: Modification of Line F at Lone Star Ordnance Plant to Provide Increased Capacity to Meet 1945 Schedule Requirements.

GENTLEMEN:

A site letter has been approved authorizing such modification of a load line (F) at the Plant as is necessary to increase the capacity for loading Fragmentation Mk11 Hand Grenades by 2,700,000 per month.

Therefore, pending the negotiation and execution of a formal supplement to Contract No. W-ORD-516 DA-W-ORD-3, as amended, covering such modification, you are hereby authorized and directed, pursuant to the provisions of Article VII-B of Title VI thereof, to furnish such management service, procure such production equipment as is not furnished by the Government, install said equipment and operate said facilities, as may be approved or ratified by the Contracting Officer, as will be necessary to provide for such facility expansion and for the operation thereof. Any Architect-engineering or construction will be done under the supervision of the Corps of Engineers by Collateral Contracts.

It is expressly understood and agreed that the work described herein is deemed to be a part of the work under said Contract No. W-ORD-516 DA-W-ORD-3, as amended, and that it shall be governed by all the applicable provisions of said contract, including, without limiting the generality of the foregoing, those pertaining to reimbursement.

The work authorized by this Change Order may involve an appreciable increase in the cost of the work. Therefore, it is understood and agreed that as soon as a detailed estimate of the amount of the work involved is available it will be furnished to the Ordnance Department by the Contractor. Any fixed fee for the foregoing work will be negotiated as a part of said supplement.

Except as hereby changed, the terms and conditions of the Original Contract, as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 14.

[fol. 383] If this Change Order is satisfactory, please so indicate by signing the three inclosed copies and returning one of the carbon copies and the original of same to this office for conforming and distributing.

For the Chief of Ordnance:

Yours very truly, (S.) S. M. Strohecker, Jr., Colonel,
Ord. Dept., Executive Officer, Field Director of
Ammunition Plants, Contracting Officer. PGP.

Receipt is hereby acknowledged of the above Change Order No. 14 to Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: January 30, 1945.

Lone Star Defense Corporation (Contractor), by (S.)
A. Kelly, Vice President. GTK.

[fol. 384] Parsons ap. Change Order No. 15. Contract No. W-ORD-516. DA-W-ORD-3, as amended.

Army Service Forces

Office of the Chief of Ordnance

Field Director of Ammunition Plants

St. Louis 8, Missouri

21 March 1945

In Reply Refer To: SPOLY-G, ~~Leads~~ Section.

Lone Star Defense Corporation
500 S. Main Street
Akron, Ohio.

Re: Continued Operation

GENTLEMEN:

Pending the execution and approval of a formal supplement to Contract No. W-ORD-516 DA-W-ORD-3, as amended, providing for continued operation of the Lone Star Ordnance Plant, you are hereby authorized and directed, pursuant to the provisions of Article VII-B of Title VII of said Contract, until notified to the contrary, to make such purchases of raw and manufactured materials, supplies, etc., necessary for such continued operation as though you had a formal supplement to said contract providing therefor, and, unless sooner notified to the contrary, upon completion of the work provided for in paragraph b. of Section 4 of Article IV-A of Title IV of said contract, continue with the operation of said Plant as directed from time to time by the Contracting Officer, in accordance with the production schedules.

All purchases and operation hereby authorized shall be carried on in accordance with all applicable terms and conditions of Contract No. W-ORD-516 DA-W-ORD-3, as amended, including, without limiting the generality of the foregoing, those relating to reimbursement for the work. A fixed-fee for any operation of said Plant beyond July 21, 1945, will be negotiated. Funds are presently available for the foregoing work under Procurement Authority

505-2760 P120 A212/51005.

Please indicate your acceptance by signing the three inclosed copies and returning the original and one of the carbon copies of same to this office.

Yours, very truly, (S.) S. M. Strohecker, Jr., Colonel,
Ord. Dept., Executive Officer, Field Director of
Ammunition Plants, Contracting Officer.

For the Chief of Ordnance:

Receipt is hereby acknowledged of the above Change Order No. 15 to Contract No. W-ORD-516 DA-W-ORD-3, dated July 23, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: April 3, 1945.

Lone Star Defense Corporation (Contractor), by (S.)
A. Kelly, Vice President. GTK.

[fol. 385] Due to change in identification system of modifications to contracts this Supplement is numbered 16, there having been executed Supplements 1, 8 and 11 and Change Orders 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14 and 15.

Contract No. W-ORD-516. DA-W-ORD-3. Supplement No. 16.

Supplemental Contract to Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

War Department

Contractor: Lone Star Defense Corporation, Akron, Ohio.
Place: At or near Texarkana, Texas.

Supplemental Contract for: Continued operation (4th year): addition of provisions pertaining to notice of labor disputes; modification of provisions pertaining to fixed fees, final payment and title.

No change is made in the estimated cost or fixed-fees by this Supplement except:

Estimated Cost under Title IV: (4th year), \$21,676,000.00.

Fixed-Fee under Title IV: (4th year), \$330,000.00.

Payments to be made by Finance Officer, U. S. Army at Red River Ordnance Depot, Texarkana, Texas.

The equipment, services and supplies to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same:

605-6034 P120 A212/61005.

505-2366 P120 A212/51005.

(S.) John K. Willard, Lt. Col., Ord. Dept., Executive Officer, Field Director Ammunition Plants, Contracting Officer.

This Supplemental Contract is authorized by and negotiated pursuant to the following laws: The Act approved July 2, 1940 (Public No. 703, 76th Cong.), as extended; the Act of March 11, 1941 (Public Law 11, 77th Cong.), as extended; the Act approved December 18, 1941 (Public Law 354, 77th Cong.); and Executive Order No. 9001 dated December 27, 1941.

[fol. 386]

Supplemental Contract

This Supplemental Contract, entered into this 20th day of July, 1945, by The United States of America, hereinafter called "the Government", represented by the Contracting Officers executing this contract, and Lone Star Defense Corporation, a corporation organized and existing under the laws of the State of Ohio (with offices in Akron, Ohio) hereinafter called "the Contractor", Witnesseth That:

Whereas, there is now in force between the parties hereto a certain contract dated July 23, 1941, identified by the Government as Contract No. W-ORD-516 DA-W-ORD-3 and being hereinafter sometimes referred to as the "Original Contract"; and

Whereas, said Original Contract has been amended by Supplemental Contracts identified by the Government as Contract No. W-ORD-516 DA-W-ORD-3, Supplements 1, 8 and 11, and by Change Orders 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14 and 15; and

Whereas, the Government now desires to further modify the Original Contract, as amended, to provide for continued operation (4th year); to add provisions pertaining to notice of labor disputes; and to change the provisions pertaining to fixed-fees, final payment and title; and

Whereas, the Contractor has agreed to such modifications upon the terms, conditions and provisions hereinafter set out; and

Whereas, the accomplishment of the above described work and modifications under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations the Secretary of War has directed that the Government enter into a Supplemental Contract with the Contractor for the accomplishment of the above described work; and

Whereas, it has been administratively determined that the foregoing will facilitate the prosecution of the war;

Now, Therefore, the parties hereto do mutually agree that the Original Contract, as amended, shall be and is hereby modified in the following particulars:

[fol. 387] A. Section 4 of Article IV-A of Title IV is changed to read:

4. a. Upon written notice to the Contractor in less than ninety (90) days before the anticipated completion of the operation provided for in Section 3, next above, the Government may, at its option, authorize the continued operation of the Plant for an additional period of twelve (12) months, and the Contractor shall undertake such continued operation under the terms and conditions of this Contract applicable to the operation of the Plant (including those relating to the fixed fee for such additional operation, which fee shall be that provided for in Section 3 of Article IV-C, Title IV hereof).

b. Beginning July 22, 1944, the Contractor shall, as directed from time to time by the Contracting Officer, operate the Plant for an additional period of twelve (12) months (July 22, 1944 to July 22, 1945).

c. Beginning July 22, 1945, the Contractor shall, as directed from time to time by the Contracting Officer, operate the Plant for an additional period of twelve (12) months (July 22, 1945 to July 22, 1946). Any operation after July 21, 1946, shall be subject to mutual agreement after negotiation.

B. Article IV-B of Title IV is changed to read:

Article IV-B-Estimates

1. a. It is estimated as of the date of the Original Contract that the cost of the work under Sections 1, 2 and 3 of Article IV-A of this Title IV will be Forty-four Million Six Hundred Ninety Thousand Dollars (\$44,690,000.00), exclusive of the Contractor's fee.

b. It is estimated as of April 21, 1943, that the cost of the work under paragraph a. of Section 4 of Article IV-A, Title IV will be Thirty-seven Million Five Hundred Sixteen Thousand Five Hundred Thirty Dollars (\$37,516,530.00), exclusive of the Contractor's fee.

c. It is estimated as of June 30, 1944, that the cost of the work under paragraph b of Section 4 of Article IV-A of this Title IV will be Forty Million Seventy-eight Thousand Five Hundred Dollars (\$40,078,500.00), exclusive of the Contractor's fee.

d. It is estimated as of the date of Supplement Sixteen that the cost of the work under paragraph c of Section 4 of Article IV-A of this Title IV will be Twenty-one Million Six Hundred Seventy-six Thousand Dollars (\$21,676,000.00), exclusive of the Contractor's fee.

2. It is expressly understood, however, that neither the Government nor the Contractor guarantees the correctness of these estimates. The estimated total costs set forth above are based upon estimates agreed to by both the Government and the Contractor, copies of which are on file in the Office of the Chief of Ordnance.

C. The following is added as Section 5 of Article IV-C of Title IV:

5. A fixed-fee for the additional operation provided for [fol. 388] in paragraph c of Section 4 of Article IV-A hereof in the amount of Three Hundred Thirty Thousand Dollars (\$330,000.00) which fee shall constitute complete compensation for Contractor's services from July 22, 1945 to July 22, 1946, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

D. The following is added as Section 8 of Article V-A of Title V:

8. It is agreed that the Contractor shall receive no fee for the work and services performed under Change Orders No. 13 and 14 to this Contract.

E. The following is added as paragraph g to Section 2 of Article V-B of Title V:

g. The fixed-fee provided for in Section 5 of Article IV-C of Title IV shall be paid as follows:

Three Hundred Thirty Thousand Dollars (\$330,000.00), for the operation of the Plant during the period provided for in paragraph c of Section 4 of Article IV-A hereof, payable in twelve (12) equal monthly installments of Twenty-seven Thousand Five Hundred Dollars (\$27,500.00) each. The first such installment to be paid August 22, 1945, and a like installment to be paid on the same day of each of the next succeeding eleven (11) months.

F. Section 4 of Article V-B of Title V is changed to read:

4. a. Upon completion of the work under Titles I and II and/or under Sections 1, 2 and 3 and paragraphs a and b of Section 4 of Article IV-A of Title IV, and again upon the completion of the work under paragraph c of Section 4 of Article IV-A of Title IV, the Government shall pay to the Contractor the unpaid balance of the cost of the work determined under Title V hereof, and of the fees, less any sums that may be necessary to settle any unsettled claims for labor or materials, or any claims in connection with this contract which the Government may have against the Contractor. The Contracting Officer shall accept or reject the completed work with reasonable promptness.

b. Prior to final payment and as a condition thereof the Contractor shall furnish the Government with a release of all claims against the Government arising under and by virtue of this contract, other than (a) such claims, if any, as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein, or in estimated amounts where the amounts are not susceptible of exact statement, and (b) any claim based upon liability of the Contractor to third parties arising out of the performance of this contract not known to the Contractor at the time of furnishing the release.

c. Even though the existence or amount thereof shall not be determined until after the furnishing of such release as

is described next above, reimbursement to be made for payments made by the Contractor shall include, along with wages and salaries otherwise reimbursable, all additional amounts determined (either by approval of the Contracting Officer or by litigation as hereinafter provided) to be due and payable for overtime compensation and allowances under local, state or Federal laws in connection with such wages and salaries.

d. The Contractor shall promptly notify the Contracting [fol. 389] Officer of any claims of the type described in (b) of paragraph b above which are asserted subsequent to the execution of the release.

e. In the event the Contracting Officer shall determine that the best interests of the Government require that the Contractor initiate or defend litigation in connection with claims of third parties arising out of the performance of this contract, the Contractor will proceed with such litigation in good faith, and the costs and expenses of such litigation, including judgments and court costs, allowances rendered or awarded in connection with suits for wages, overtime or salaries, and reasonable attorney's fees for private counsel when the Government does not furnish Government counsel, shall be reimbursable under the contract. The term "litigation" shall include suits at law or in equity and proceedings before any Governmental agency having jurisdiction over the claim.

G. Article VII-C of Title VII is changed to read:

Article VII-C—Title

Title to all materials, tools, machinery, equipment and supplies for which the Contractor shall be entitled to reimbursement under this contract shall vest in the Government upon delivery at the Plant site or at such other point or points as the Contracting Officer may designate in writing; Provided, that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; Provided, further, that upon such final inspection, the Contractor shall be given written notice of acceptance or rejection as the case may be. In the event of rejection, the Contractor shall be responsible for the removal of the rejected property within a reasonable time.

H. The following is added as paragraph 9 of Article VII-F of Title VII:

9. Immediately give notice to the Contracting Officer whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, or of any such actual or potential labor dispute.

I. The provisions of Change Order No. 15 have been incorporated in Title IV. Therefore, Change Order No. 15 is hereby superseded.

J. Except as herein provided, the terms and conditions of the Original Contract, as amended, shall continue in full force and effect and shall apply with equal force to this Supplemental Contract.

K. The following alterations were made in this Supplemental Contract before it was signed by the parties hereto:

None.

[fol. 390] In witness whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

The United States of America, By (S.) John K. Willard, Lt. Col., Ord. Dept., Executive Officer, Field Director Ammunition Plants (Contracting Officer appointed by the Chief of Ordnance).
J.J.McI. Lone Star Defense Corporation (Contractor), By (S.) T. G. Graham, Business Address: 500 S. Main St., Akron, Ohio.

Two Witnesses as to Execution by the Contractor:

(S.) Edw. A. Cole, Address: 509 Avalon, Akron;
(S.) Jerome Taylor, Address: Akron, Ohio.

I, G. T. Kilmon, certify that I am the Assistant Secretary of the Corporation named as Contractor herein; that T. G. Graham, who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(S.) G. T. Kilmon, Assistant Secretary. (Corporate Seal.)

[fol. 391]

Consent of Surety

To Supplemental Contract No. 16 dated July 20, 1945, in connection with Contract No. W-ORD-516 DA-W-ORD-3 between the United States of America and the Lone Star Defense Corporation.

Consent of Surety is hereby given to the foregoing Supplemental Agreement, and the Surety agrees that its bond or bonds shall apply to and cover the due performance of the Contract as modified and extended thereby.

In witness whereof, the undersigned Surety has executed this instrument under its seal this 17th day of August, 1945.

The B. F. Goodrich Company. By (S.) T. G. Graham.
(Corporate Seal.)

Attest: (S.) W. F. Avery.

Certificate as to Corporate Surety

I, W. F. Avery, certify that I am the Secretary of the corporation named as surety in the above Consent of Surety; that T. G. Graham, who signed the said Consent of Surety on behalf of the surety, was then Vice President of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

(S.) W. F. Avery, Secretary. (Corporate Seal.)

[fol. 392] Due to change in identification system of modifications to contracts this Change Order is numbered 17 there having been executed Supplements 1, 8, 11 and 16 and Change Orders 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14 and 15.

PMMattice/srp. Date: 15 August 1945. Change Order No. 17. Contract No. W-ORD-516 DA-W-ORD-3, as amended.

War Department—Ordnance Department**Change Order To****Cost-Plus-A-Fixed-Fee****New Ordnance Facility****Construction and Operation Contract**

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Name and Location of Plant: Lone Star Ordnance Plant, Texarkana, Texas.

1. Pursuant to the provisions of Article VII-B of Title VII of Contract W-ORD-516 DA-W-ORD-3, as amended, the following additional instructions are hereby issued and the following additions to and omissions from the work covered by said contract are hereby ordered:

a. You will (1) cease all loading operations immediately in connection with the Lone Star Ordnance Plant except to complete the loading of the materials in process, (2) proceed to do all things necessary to make said Plant safe and free from explosive hazards insofar as is reasonably possible to do so, (3) continue with the operation of the ammonium nitrate graining facilities at Plant, and (4) proceed with the settlement of your subcontracts cancelled due to recent schedule cutbacks and/or due to the work ordered omitted hereby (such settlement shall be made subject to the approval of the Contracting Officer).

2. It is expressly understood and agreed that the foregoing is deemed to be part of the work under said Contract W-ORD-516 DA-W-ORD-3, as amended.

3. It is further understood and agreed that the foregoing will cause a material decrease in the amount of the work under said Contract and in the estimated cost of the Contractor's services thereunder. Therefore, an equitable adjustment of the amount of the fixed-fee to be paid the Contractor shall be made and the contract modified by a future supplement thereto accordingly.

4. Except as hereby changed, the terms and conditions of said contract, as amended, shall remain in full force and

effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 17.

The United States of America, (S.) John K. Willard, Lt. Col., Ord. Dept., Executive Officer, Field Director of Ammunition Plants, Contracting Officer, PGP.

Receipt is hereby acknowledged of the above Change Order No. 17 to Contract W-ORD-516 DA-W-ORD-3, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Dated September 8, 1945.

Lone Star Defense Corporation, by (S.) A. Kelly, Vice President.

[fol. 393] Due to change in identification system to modifications to contracts this Supplement is numbered 18, there having been executed Supplements 1, 8, 11 and 16, and Change Orders 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15 and 17.

Contract No. W-ORD-516. DA-W-ORD-3. Supplement No. 18.

Cost-Plus-a-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

War Department

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Place: At or near Texarkana, Texas.

Supplemental Contract: Providing for the estimated cost of the work in ceasing loading operations, decontaminating the Plant, and continuing the operation of the ammonium nitrate-graining facilities.

Payments to be made by Finance Officer, U. S. Army, at Red River Ordnance Depot, Texarkana, Texas.

The equipment, supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authority, the available balance of which is sufficient to cover the cost of the same: 605-6034 T 20 A212/61005.

This Supplemental Contract is authorized by and negotiated pursuant to the following laws: The Act approved July 2, 1940 (Public No. 703, 76th Cong.), as extended, the Act of March 11, 1941 (Public Law 11, 77th Cong.), as extended; the Act approved December 18, 1941 (Public Law 354, 77th Cong.); and Executive Order No. 9001 dated December 27, 1941.

(S.) R. H. Stratton, Lt. Col., Ord. Dept., Executive Officer, Field Director of Ammunition Plants, Contracting Officer.

[fol. 394] Supplemental Contract

This Supplemental Contract, entered into this 12th day of October 1945, by the United States of America, hereinafter called the "Government", represented by the Contracting Officer executing this contract, and Lone Star Defense Corporation, a corporation organized and existing under the laws of the State of Ohio (with offices in Akron, Ohio) hereinafter called the "Contractor", witnesseth that:

Whereas, there is now in force between the parties hereto a certain contract dated July 23, 1941, identified by the Government as Contract No. W-ORD-516 DA-W-ORD-3 and being hereinafter sometimes referred to as the "Original Contract"; and

Whereas, the Original Contract has been supplemented and amended by various Change Orders and Supplemental Agreements; and

Whereas, the Contracting Officer, after consultation with the Contractor, by a written order, dated August 15, 1945, and designated as Change Order No. 17; directed the Contractor to omit certain work covered by the said contract, to decontaminate the Plant, to continue with certain other work under the said contract; and

Whereas, the above mentioned changes caused a material decrease in the amount of the work to be done under the said contract; and

Whereas, the Original Contract, as amended, provides that an equitable adjustment of the amount of the fixed-fees to be paid the Contractor shall be made if such changes cause a material decrease in the amount of the work to be done under the said contract; and

Whereas, the Government and the Contractor, after negotiations, have arrived at an agreement as to the estimated cost of the work to be performed by reason of such changes, and the amount of the fixed-fee to be paid therefor; and

Whereas, it has been administratively determined that the foregoing will facilitate the prosecution of the war; and

Whereas, the Contractor has agreed to such modifications upon the terms, conditions and provisions hereinafter set out; and

Whereas, the accomplishment of the above described work under a cost-plus-a-fixed-fee contract entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations the Secretary of War has directed that the Government enter into a Supplemental Contract with the Contractor for the accomplishment of the foregoing;

Now, Therefore, the parties hereto do mutually agree that the Original Contract, as amended, shall be and is hereby modified in the following particulars:

[fol. 395] A. Paragraph c. of Section 4 of Article IV-A of Title IV is changed to read:

c. Beginning July 22, 1945, the Contractor shall, as directed from time to time by the Contracting Officer, operate the Plant to August 15, 1945.

B. The following is added as paragraph d. to Section 4 of Article IV-A, Title IV:

d. Beginning August 15, 1945, the Contractor shall (1) cease all loading operations in connection with the Plant except to complete, as directed or approved by the Contracting Officer, the loading of the materials in process; (2) proceed to do all things necessary to make said Plant safe and free from explosive hazards insofar as is reasonably possible to do so, as may be required or approved by the Contracting Office, and (3) continue with the operation of the ammonium nitrate graining facilities for the production of such quantities as may be directed from time to time by the Contracting Officer for a period ending 31 December 1945.

C. Due to the omission of work under paragraph c. of Section 4 of Article IV-A of Title IV a reduction in the esti-

mated cost of the work in the amount of *Twenty Million One Hundred Ninety-one Thousand Three Hundred Forty-two Dollars (\$20,191,342.00)* has been agreed upon. Therefore, paragraph *d* of Section 1 of Article IV-B of Title IV is changed to read:

d. It is estimated that the cost of the work under paragraph *c.* of Section 4 of Article IV-A of this Title IV will be *One Million Four Hundred Eighty-four Thousand Six Hundred Fifty-eight Dollars (\$1,484,658.00)*, exclusive of the Contractor's fee. It is estimated that the cost of the work under paragraph *d.* of Section 4 of Article IV-A of this Title IV will be *One Million Six Hundred Fifty Thousand Dollars (\$1,650,000.00)*, exclusive of the Contractor's fee.

D. Due to the omission of work under paragraph *c.* of Section 4 of Article IV-A of Title IV a reduction in the fixed fee in the amount of *Three Hundred Six Thousand Nine Hundred Thirty-six Dollars (\$306,936.00)* has been agreed upon. Therefore, Section 5 of Article IV-C of Title IV is changed to read:

5. A fixed-fee for the additional operation provided for in paragraph *c.* of Section 4 of Article IV-A hereof in the amount of *Twenty-three Thousand Sixty-four Dollars (\$23,064.00)* which fee shall constitute complete compensation for Contractor's services from July 22, 1945 to August 15, 1945, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

E. The following are added as Sections 6 and 7 of Article IV-C of Title IV:

6. A fixed-fee for the work provided for in subparagraphs (1) and (2) of paragraph *d.* of Section 4 of Article IV-A hereof in the amount of *Forty-six Thousand Nine Hundred Thirty-six Dollars (\$46,936.00)*, which fee shall constitute complete compensation for contractor's services under said subparagraphs (1) and (2).

7. A fixed-fee for the work provided for in subparagraph (3) of paragraph *d.* of Section 4 of Article IV-A hereof in the amount of *Five Thousand Dollars (\$5,000.00)*, which fee [fol. 396] shall constitute complete compensation for contractor's services under said subparagraph (3).

F. The following is added as paragraph *f.* of Section 1 of Article V-A, Title V:

f. Costs and expenses incurred pursuant to the terms of Change Order No. 17 dated August 15, 1945 and accepted by the Contractor September 8, 1945. Said Change Order No. 17 shall cease and terminate for all purposes upon the date of execution of this Eighteenth Supplement, except for the authority heretofore granted the Contractor by the terms of this contract, and explicitly reiterated in said Change Order No. 17, to proceed with the settlement of all cancelled subcontracts and purchase orders, which authority is hereby continued with the same force and effect as if herein set forth in full.

G. Paragraph *g.* of Section 2 of Article V-B of Title V is changed to read:

g. The fixed-fee provided for in Section 5 of Article IV-C of Title IV shall be paid as follows: *Twenty-three Thousand Sixty-four Dollars (\$23,064.00)* for the operation of the Plant during the period provided for in paragraph *c* of Section 4 of Article IV-A hereof, payable upon completion of such work and its acceptance in writing by the Contracting Officer.

H. The following are added as paragraphs *h.* and *i.* to Section 2 of Article V-B of Title V:

h. The fixed-fee of *Forty-six Thousand Nine Hundred Thirty-six Dollars (\$46,936.00)* provided for in Section 6 of Article IV-C of Title IV shall be paid either upon the furnishing by the Contractor to the Government of the release provided for in Section 4 of Article V-B hereof or under a Final Settlement Agreement whichever may be mutually agreed to by the parties.

i. The fixed-fee of *Five Thousand Dollars (\$5,000.00)* provided for in Section 7 of Article IV-C of Title IV shall be paid in full upon termination of this contract anything contained herein to the contrary notwithstanding or upon completion of such work and its acceptance in writing by the Contracting Officer.

I. Paragraph *a.* of Section 4 of Article V-B of Title V is changed to read:

a. Upon completion of the work under Titles I and II and/or under Sections 1, 2 and 3 and paragraphs *a.* and *b.* of Section 4 of Article IV-A of Title IV, and again upon the completion of the work under paragraphs *c.* and *d.* of Section 4 of Article IV-A of Title IV, the Government shall pay to the Contractor the unpaid balance of the cost of the work determined under Title V hereof, and of the fees, less any sums that may be necessary to settle any unsettled claims for labor or materials, or any claims in connection with this contract which the Government may have against the Contractor. The Contracting Officer shall accept or reject the completed work with reasonable promptness.

J. Paragraph *c.* of Section 3 of Article VI-A of Title VI is changed to read:

c. The Government shall reimburse the Contractor for such further expenditures, made after the date of termination [fol. 397], for the protection of Government property and for accounting services in connection with the settlement of this contract as are required or approved by the Contracting Officer and for all costs of the Contractor in connection with any claims or suits arising out of or connected with the performance of this contract, including but not limited to costs and expenses of litigation, accounting and clerical expenses, compensation and expenses of personnel engaged in obtaining information or preparing data.

K. The following changes were made in this contract before it was signed by the parties hereto:

None.

[fol. 398] In witness whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

The United States of America, by (S.) R. H. Stratton (19 Oct. 45). Lt. Col., Ord. Dept., Executive Officer, Field Director Ammunition Plants (Contracting Officer appointed by the Chief of Ordnance).

Two Witnesses as to Execution by the Contractor:

(S.) C. R. Coats, Akron, Ohio. (S.) Jerome Taylor, Akron, Ohio. Lone Star Defense Corporation (Contractor), by (S.) A. Kelly, Vice President, 500 S. Main Street, Akron, Ohio. GTK.

I, G. T. Kilmon, certify that I am the Assistant Secretary of the Corporation named as Contractor herein; that A. Kelly who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(S.) G. T. Kilmon, Assistant Secretary, (Corporate Seal.)

[fol. 399]

Consent of Surety

To Supplemental Contract No. 18 dated October 12, 1945, in connection with Contract No. W-ORD-516 DA-W-ORD-3 between the United States of America and the Lone Star Defense Corporation.

Consent of Surety is hereby given to the foregoing Supplemental Agreement, and the Surety agrees that its bond or bonds shall apply to and cover the due performance of the Contract as modified and extended thereby.

In witness whereof, the undersigned Surety has executed this instrument under its seal this 12th day of October, 1945.

The B. F. Goodrich Company, by (S.) T. G. Graham, Vice President (Corporate Seal.)

Attest:

(S.) W. F. Avery, Secretary.

Certificate as to Corporate Surety

I, W. F. Avery, certify that I am the Secretary of the corporation named as surety in the above Consent of Surety; that T. G. Graham, who signed the said Consent of Surety on behalf of the surety, was then Vice President of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and

attested for and in behalf of said corporation, by authority of its governing body.

(S.) W. F. Avery, Secretary (Corporate Seal.)

[fol. 400]

Army Service Forces
Office of the Chief of Ordnance
Field Director of Ammunition Plants
St. Louis 8, Missouri

18 October 1945

In Reply: SPOLY-G.

Refer to Legal Section.

Notice of Termination. Contract W-ORD-516, DA-W-ORD-3, as amended

Lone Star Defense Corp.
500 S. Main Street
Akron, Ohio

Attn.: Mr. A. Kelly

Re: Termination of the Work under Contract W-ORD-516 DA-W-ORD-3, Lone Star Ordnance Plant.

GENTLEMEN:

Effective midnight, 26 October 1945, the work under Contract W-ORD-516 DA-W-ORD-3, as amended, is terminated for the convenience of the Government.

Please execute the acknowledgement of receipt on the three inclosed copies and return the original and one of the carbon copies to this office.

For the Chief of Ordnance:

Yours very truly, (S.) R. H. Stratton, Lt. Col., Ord.
Dept., Executive Officer, Field Director of Ammunition Plants, Contracting Officer.

Receipt is hereby acknowledged of above Notice of Termination to Contract W-ORD-516 DA-W-ORD-3, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: Oct. 20, 1945.

Lone Star Defense Corporation, by (S.) A. Kelly,
GTK.

[fol. 401] Due to change in identification system of modifications to contracts this Supplement is numbered 19, there having been executed Supplements 1, 8, 11, 16 and 18, and Change Orders 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15 and 17.

Contract No. W-ORD-516. DA-W-ORD-3. Supplement No. 19.

Cost-Plus-A-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract

War Department

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Place: At or near Texarkana, Texas.

Supplemental Contract: Providing for modification of the provisions relating to termination.

Payments to be made by Finance Officer; U. S. Army at Red River Ordnance Depot, Texarkana, Texas.

The equipment, supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authority, the available balance of which is sufficient to cover the cost of the same: 605-6034 P120 A212/61005.

This Supplemental Contract is authorized by and negotiated pursuant to the following laws: The Act approved July 2, 1940 (Public No. 703, 76th Cong.), as extended; the Act of March 11, 1941 (Public Law 11, 77th Cong.), as extended; the Act approved December 18, 1941 (Public Law 354, 77th Cong.); and Executive Order No. 9001 dated December 27, 1941.

(S.) R. H. Stratton, Lt. Col., Ord. Dept.; Executive Officer, Field Director Ammunition Plants, Contracting Officer.

[fol. 402] Supplemental Contract

This Supplemental Contract, entered into this 5th day of December, 1945, by the United States of America, hereinafter called the "Government"; represented by the Contracting Officer executing this contract, and Lone Star Defense Corporation, a corporation organized and existing un-

der the laws of the State of Ohio (with offices in Akron, Ohio) hereinafter called the "Contractor", Witnesseth that:

Whereas, there is now in force between the parties hereto a certain contract dated July 23, 1941, identified by the Government as Contract No. W-ORD-516 DA-W-ORD-3 and being hereinafter sometimes referred to as the "Original Contract"; and

Whereas, the Original Contract has been supplemented and amended by various Change Orders and Supplemental Agreements; and

Whereas, the Original Contract, as amended, provides for termination thereof for the convenience of the Government, and provides for reimbursement for the cost of the work incurred by reason of such termination; and

Whereas, pursuant to the above mentioned provisions of the said contract, the Government, by a notice in writing, dated 18 October 1945, and accepted by the Contractor 20 October 1945, terminated as of midnight 26 October 1945, the work under said contract for the convenience of the Government; and

Whereas, various claims and suits under the Fair Labor Standards Act or other Acts, laws, regulations or Executive Orders relating to or affecting employment, hours or conditions of work, and wages or compensation paid therefor, have been instituted against the Contractor, both prior and subsequent to the effective date of said Notice of Termination by persons employed by the Contractor in the performance of the work under the Original Contract, as amended; and

Whereas, the Original Contract, as amended, provides that upon termination of the contract the Government shall assume and become liable for all obligations, commitments and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with the work and the cost of which would be reimbursable in accordance with the provisions of this contract; and

Whereas, it has been determined by the Contracting Officer that the above mentioned claims and suits are claims which the Contractor in good faith has heretofore incurred in connection with the work and the cost of which would be reimbursable in accordance with the provisions of the contract, as amended; and

Whereas, the Original Contract, as amended, provides that all work under this contract is to be performed at the expense of the Government, and the Government shall indemnify and hold the Contractor harmless against any loss, expense (including expense of litigation) or damage (including personal injuries and deaths of persons and damage to property) of any kind whatsoever arising out of or in connection with the performance of this work, unless such [fol. 403] loss, expense or damage should be shown by the Government to have been caused directly by bad faith or willful misconduct on the part of some officer or officers of the Contractor acting within the scope of his or their authority and employment; and

Whereas, it has been determined by the Contracting Officer that the above mentioned claims and litigation have not been caused by bad faith or willful misconduct on the part of some officer or officers of the Contractor; and

Whereas, the Original Contract, as amended, provides that, upon request by the Contracting Officer, the Contractor shall authorize representatives of the Government to settle and/or defend any claim against the Contractor, the cost and expense of which are reimbursable under the provisions of the Contract, or to take charge of any litigation filed against the Contractor arising out of the performance of the Contract, and that thereafter the Government shall be solely responsible for the handling of such litigation and for any settlement made or judgment rendered therein; and

Whereas, pursuant to the above mentioned provisions of the said contract and at the request and direction of the Contracting Officer, the Contractor authorized representatives of the Government to settle and/or defend the above mentioned claims and to represent and take charge of the above mentioned suits and litigation affecting the Contractor with the mutual intent that the Government should thereafter be solely responsible for the handling of such suits and litigation and for any settlements made or judgments rendered therein; and

Whereas, it has been administratively determined by Government representatives other than the Contracting Officer that Government counsel to settle and/or defend such claims and to represent and take charge of or handle such litigation will not be furnished; and

Whereas, the Original Contract, as amended, provides that in the event the Contracting Officer shall determine that the

best interests of the Government require that the Contractor initiate or defend litigation in connection with claims of third parties arising out of the performance of this contract, the Contractor will proceed with such litigation in good faith; and the costs and expenses of such litigation shall be reimbursable under the contract; and

Whereas, the Contracting Officer has determined that it is in the best interests of the Government for the Contractor to take charge of the defense and/or settlement of such claims and litigation and to employ private counsel therefor; and,

Whereas, other claims or suits arising out of or in connection with the performance of this contract may likewise be instituted against the Contractor which the Government may desire that the Contractor settle and/or defend; and

Whereas, the handling of the settlement and/or defense of such claims and suits will require the Contractor to employ and retain on its rolls personnel for such work; and

Whereas, the Contractor is willing to undertake in good faith the defense and/or settlement of all such claims and the handling of all such litigation without the payment of [fol. 404] any fee therefor, provided that the Contractor is assured that the Government will provide adequate funds for such work, and will reimburse the Contractor for all its costs and expenses of whatsoever nature in connection therewith and provided that the payment of its fixed-fees for work heretofore completed will not be delayed by reason thereof; and

Whereas, the Government hereby acknowledges its liability and responsibility for all settlements, judgments, costs and expenses whatsoever arising out of or in connection with all such claims and litigation in accordance with all the applicable provisions of said contract, as amended; and

Whereas, the Government and the Contractor, after negotiations, have agreed that the Contractor shall handle the settlement and/or defense of all such claims and take charge of such litigation for the Government; and

Whereas, it has been administratively determined that the foregoing will facilitate the prosecution of the war; and

Whereas, the Contractor has agreed to such modifications upon the terms, conditions and provisions herein after set out; and

Whereas, the accomplishment of the above described work under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations the Secretary of War has directed that the Government enter into a Supplemental Contract with the Contractor for the accomplishment of the above described work;

Now, therefore, the parties hereto do mutually agree that the Original Contract, as amended, shall be and is hereby modified in the following particulars:

[fol. 405] A. Paragraph *c.* of Section 3 of Article VI-A of Title VI is changed to read:

c. The Government shall reimburse the Contractor for such further expenditures as are required, approved or ratified by the Contracting Officer, (including but not limited to all types of expenditures set forth in Section 1 of Article V-A of Title V) made after the date of termination, for the protection of government property, for accounting services in connection with the settlement of the contract and for all costs of the contractor in connection with any claims or suits arising out of or connected with the performance of this contract, including but not limited to settlements approved by the Contracting Officer, judgments (including amounts for liquidated damages, plaintiffs' attorney fees or other allowances under local, state or Federal laws in connection with wages and salaries) reasonable attorney fees and charges of private counsel when the Government does not furnish counsel, court costs and court reporter's charges, costs of appeals, compensation and expenses of personnel engaged in obtaining information or preparing data, and expenses for office space equipment, facilities and supplies not furnished by the Government.

B. Paragraph *d.* of Section 3 of Article VI-A of Title VI is changed to read:

d. (1) If the contract is terminated for the convenience of the Government, the Contractor will be paid all fees which have accrued at the date of termination, less fee payments previously made. If the contract is terminated due to fault of the Contractor, no additional payment on account of the

fixed-fees will be made. (2) No additional fixed-fee will be paid for work done after the effective date of termination.

C. Except as herein provided, the terms and conditions of the Original Contract, as amended, shall continue in full force and effect and shall apply with equal force to this Supplemental Contract.

D. The following alterations were made in this Supplemental Contract before it was signed by the parties hereto:

Section 5 of Article VI-A of Title VI is added and reads:

5. Whenever used in this Article VI-A, the term, "~~termination of this contract~~" shall be construed to mean termination of the work under the contract, rather than termination of any of the rights or obligations which continue in accordance with the provisions of this contract.

[fol. 406] In witness whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

The United States of America, by (S.) R. H. Stratton, Lt. Col., Or. Dept., Executive Officer, Field Director Ammunition Plants (Contracting Officer Appointed by the Chief of Ordnance):

Two Witnesses as to Execution by the Contractor:

(S.) C. R. Coutts, Akron, Ohio. (S.) Jerome Taylor, Akron, Ohio. Lone Star Defense Corporation (Contractor), by (S.) A. Kelly, Vice President, 500 S. Main Street, Akron, Ohio.

I, G. T. Kilmon, certify that I am the Assistant Secretary of the Corporation named as Contractor herein; that A. Kelly who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(S.) G. T. Kilmon, Assistant Secretary (Corporate Seal.)

[fol. 407]

Consent of Surety

To Supplemental Contract No. 19 dated 5 December 1945, in connection with Contract W-ORD-516 DA-W-ORD-3 between the United States of America and the Lone Star Defense Corporation.

Consent of Surety is hereby given to the foregoing Supplemental Agreement, and the Surety agrees that its bond or bonds shall apply to and cover the due performance of the Contract as modified and extended thereby.

In witness whereof, the undersigned Surety has executed this instrument under its seal this 21st day of December, 1945.

The B. F. Goodrich Company, by (S.) T. G. Graham,
Vice President (Corporate Seal.)

Attest:

(S.) W. F. Avery, Secretary.

Certificate as to Corporate Surety

I, W. F. Avery, certify that I am the Secretary of the corporation named as surety in the above Consent of Surety; that T. G. Graham who signed the said Consent of Surety on behalf of the surety, was then Vice President of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing body.

(S.) W. F. Avery, Secretary (Corporate Seal)

[fol. 408] Contract No. W-ORD-516 DA-W-ORD-3

Supplement No. 20

War Department—Ordnance Department

Supplemental Contract To Provide Assignment to the Government and Assumption by the Government of Rights and Obligations Under Various Insurance Policies

1. The Contractor does hereby assign, transfer and set over to the Government, as of the date hereof, all of its right, title and interest in and to all return premiums, premium

refunds, dividends and any other moneys due or to become due the Contractor in connection with the following policies:

Policy No.	Company
CGL-1163-E	American Mutual Liability Insurance Company
ALT-1814	American Mutual Liability Insurance Company
ME-4951-E	American Mutual Liability Insurance Company
WC-225873-E	American Mutual Liability Insurance Company

2. It is agreed that such return premiums, premium refunds, dividends and other moneys shall be paid by the Insurance Carrier directly to the Government.

3. The Government does hereby assume the obligation to pay directly to the Insurance Carrier any further or additional premium properly charged under any of the above insurance policies heretofore approved by the Government, which further or additional premium has not been paid by the Contractor, to the extent to which such premium would have been reimbursable to the Contractor if payment therefor had been made by the Contractor.

In Witness Whereof, the Contractor and the Government have executed this instrument this 31st day of May, 1946:

The United States of America, by (S.) C. W. Mel-drum, Lt. Col., Ord. Dept., Executive Officer, Field Director Ammunition Plants, Contracting Officer; Contractor. Lone Star Defense Corporation, by (S.) A. Kelly, Vice President (Corporate Seal.)

Attest:

(S.) W. F. Avery, Secretary.

[fol. 409] This Supplement is numbered 21, there being in existence 7 Supplements and 13 Change Orders.

Contract No. W-ORD-516. DA-W-ORD-3. Supplement No. 21.

Supplemental Contract to Cost-Plus-A-Fixed-Fee

New Ordnance Facility Contract

War Department

Contractor: Lone Star Defense Corporation, Akron, Ohio.

Place: At or near Texarkana, Texas.

Supplemental Contract for: Final Settlement.

Payments to be made by Finance Officer, U. S. Army at Red River Arsenal, Texarkana, Texas.

The equipment, services and supplies to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authority, the available balance of which is sufficient to cover the cost of the same: 505-8012 P120 A 212 61005.

This Supplemental Contract is authorized by and negotiated pursuant to the Contract Settlement Act of 1944 (Public Law 395, 78th Congress).

(S.) C. W. Meldrum, Lt. Col., Ord. Dept., Executive Officer, Field Director Ammunition Plants, Contracting Officer.

[fol. 410].

Supplemental Contract

This supplemental contract (hereinafter referred to as "Settlement Agreement"), entered into pursuant to the Contract Settlement Act of 1944 (hereinafter called "the Act"), as of this 1st day of June 1946, by the United States of America (hereinafter called "the Government") represented by the Contracting Officers executing this contract and Lone Star Defense Corporation, a corporation organized and existing under the laws of the state of Ohio, with its principal office in Akron, Ohio (hereinafter called "the Contractor").

Witneseth that:

Whereas, the Contractor and the Government have entered into Contract No. W-ORD-516 DA-W-ORD-3 under date of 23 July 1941, which, together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Contract"; and

Whereas, the Act declares that upon the termination of any war contract (as therein defined) in whole or in part for the convenience or at the option of the Government, it shall be the responsibility of the contracting agency (as

therein defined) to provide the war contractor with speedy and fair compensation for the termination of the war contract and provides that any contracting agency may settle all, or any part of any termination claim under any war contract by agreement with the war contractor; and

Whereas, the Contract provides that the performance of work thereunder may at the option of the Government be terminated by the Government; and

Whereas, by Notice of Termination dated 18 October 1945, effective as of Midnight 26 October 1945, the Government advised the Contractor of the complete termination of the work under the Contract for the convenience and at the option of the Government; and

Whereas, the term "contract termination inventory", as used herein, shall mean all materials (including a proper part of any common materials), if any, determined by the parties hereto, in connection with this settlement, to be properly allocable to the terminated portion of the Contract, except any machinery or equipment subject to a separate contract or contract provision specifically governing the use or disposition thereof; and

Whereas, the term "subcontract termination inventory", as used herein, shall mean all materials (including a proper part of any common materials), if any, determined by the parties to any subcontract under the Contract, in connection with the settlement thereof, to be properly allocable to the terminated portion of such subcontract, except any machinery or equipment subject to a separate contract or contract provision specifically governing the use or disposition thereof; and

Whereas, the Contracting Officer, as evidenced by his execution of this Settlement Agreement, has administratively determined that the Contractor has satisfactorily completed all of its work and satisfactorily performed all of its obligations [fol. 411] under the Contract, except as otherwise provided herein, and has satisfactorily accounted for and delivered to the Government all property, real and personal, materials, supplies and funds which have come into its possession and for which it is in any way chargeable, and the Contractor is hereby expressly relieved and released from all accountability and responsibility therefor or in any way connected therewith;

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Now, therefore, the parties hereto do mutually agree as follows:

Article 1. (a) The Contractor certifies that all contract inventory (including scrap), if any, has been retained, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this Settlement Agreement.

(b) The Government hereby acknowledges that the Contractor has turned over to the Government and accounted for all Government-owned facilities (machinery, equipment and all other property, both real and personal), materials, supplies, and other property of whatever kind or character previously turned over by the Government to the Contractor or acquired by the Contractor for the Government under the provisions of the Contract, except such of said property, if any, as the Contractor has acquired, by this Settlement Agreement or otherwise, from the Government, for which property a satisfactory accounting has been made, except such items of machinery, equipment, materials, supplies, and other property as have been lost, destroyed, worn out or damaged beyond repair or otherwise disposed of in the course of the work under the Contract, for which property a satisfactory accounting has also been made, and in respect of such lost, destroyed, worn out, damaged, or otherwise disposed of items, the Government has and hereby relieve the Contractor from any and all responsibility therefor.

Article 2. (a) The Contractor certifies that, prior to the execution of this Settlement Agreement, each of the Contractor's immediate subcontractors whose claim has been reimbursed to the Contractor under the Contract or whose claim is included in the claims settled by this Settlement Agreement has either (1) properly submitted his claim on Standard Form 1a of the Office of Contract Settlement or other appropriate form, or (2) furnished to the Contractor a certificate stating (i) that all his subcontract termination inventory (including scrap) has been retained, sold, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract.

or subcontracts, and (ii) that the subcontractor has received from each of his immediate subcontractors whose claim was included in his claim either a claim properly submitted on Standard Form 1a or on other appropriate form or a certificate substantially similar to clause (i) and this clause (i) of this Article 2 (a). The Contractor further certifies (except as to claims heretofore or hereafter assigned to the Government) that, prior to the execution of this Settlement [fol. 412] Agreement, each of such subcontractors has executed a release of his claim on a form satisfactory to the Contracting Officer or has otherwise settled his claim in a manner satisfactory to the Contracting Officer; or, that, in the event final payment has not been made prior to the execution of this Settlement Agreement, such release will be secured upon payment.

(b) The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto whether arising under negotiated settlements, formula determinations; or otherwise.

Article 3. In all cases, if any, where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payments provided for in paragraph (b) of Article 4; pay to each of its immediate subcontractors and suppliers (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors and suppliers. If the Contractor fails to make any such payment within ten (10) days, the Contractor will, upon request, return to the Government the amount payable to such immediate subcontractors and suppliers, less any amount then due and payable to the Contractor by them.

Article 4. (a) The Contractor has received, prior to the effective date of termination, certain sums with respect to work and services performed, or articles delivered, under the Contract. The Contractor has also received, after the effective date of termination, certain additional sums for work and services performed, or articles delivered, under the

Contract, or certain sums as final payments on partial settlements or in partial payment on account of the Contractor's termination claim. The Government, as part of this negotiated settlement, hereby confirms and acknowledges the right of the Contractor to retain all such sums heretofore paid and agrees that such sums constitute a portion of the total amount to which the Contractor is entitled in complete and final settlement of the Contract.

(b) In addition, upon execution of this Settlement Agreement the Government agrees to pay to the Contractor the sum of Fifty-Five Thousand Six Hundred Ninety Dollars and Twenty-Two Cents (\$55,690.22), which includes (1) full payment of the sum of Forty-Six Thousand Nine Hundred Thirty-Six Dollars (\$46,936.00) as provided by Section 6 of Article IV-C of Title IV of the Contract as set forth in Supplement No. 18, dated 12 October 1945, and (2) the sum of No Dollars (\$00.00) as payment in full of the due and unpaid balance, if any, of any and all fixed-fees withheld by the Government from fee payments heretofore made, and (3) the sum of Twenty-Three Thousand Sixty-Four Dollars (\$23,064.00) as payment in full of the due and unpaid balance of fixed-fees, if any, which accrued pursuant to Section 5 of Article IV-C of Title IV of the Contract, as amended, as set forth in said Supplement No. 18 thereof, and (4) the sum of Five Thousand Dollars (\$5,000.00) as payment in full of the due and unpaid balance of fixed-fees, if any, which accrued pursuant to Section 7 of Article IV-C of Title IV of the Contract, as amended, as set forth in said Supplement No. 18 thereof. The said sum of Fifty-Five Thousand Six [fol. 413] Hundred Ninety Dollars and Twenty-Two Cents (\$55,690.22) represents the sum of Four Hundred Eighty-Three Thousand Twenty-Four Dollars and Sixty-Three Cents (\$483,024.63), less (1) the sum of Three Hundred Ninety-Two Thousand Three Hundred Thirty-Four Dollars and Forty-One Cents (\$392,334.41) representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and (2) the sum of Thirty-Five Thousand Dollars (\$35,000.00) representing all unliquidated advance payments (with interest, if any, thereon) and (3) the sum of No Dollars (\$00.00) representing all applicable property disposal credits. All interest, if any, to which the Contractor is entitled under the Act to the date of payment is included in said sum of Fifty-Five

Thousand Six Hundred Ninety Dollars and Twenty-Two Cents (\$55,690.22), or, to the extent not so included, is expressly waived by this Settlement Agreement. Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the termination of work, or otherwise, under the Contract and of all other claims of the Contractor under the Contract and under the Act, insofar as it pertains to the Contract, except as hereinafter provided..

(c) Upon payment of said sum of Fifty-Five Thousand Six Hundred Ninety Dollars and Twenty-Two Cents (\$55,690.22), as aforesaid, all rights and liabilities of the parties under the Contract and under the Act, insofar as it pertains to the Contract, shall cease, and be forever released except:

(1) Claims by the Contractor against the Government, which involve costs reimbursable under the Contract and which arise under the Contract or by virtue of the termination in stated or estimated amounts as follows:

(a) Claims by third parties against the Contractor, as set forth in Schedule A on page 13 hereof and hereby made a part of this Settlement Agreement.

(b) Claims of whatever kind or character under the Fair Labor Standards Act and other Acts, laws, regulations or executive orders relating to or affecting employment, hours, or conditions of work, and wages or compensation paid therefor, and claims which may now appear to be settled by releases or other documents, but which are hereafter found by the Contracting Officer or by court action to be invalid. The estimated amount of payments to be made hereunder is Two Million One Hundred Fifty Thousand Dollars (\$2,150,000.00).

(2) Claims by the Contractor against the Government, as to which its right of reimbursement is disputed, which are excluded without prejudice to the rights of either party and which are listed as follows:

(a) Claims in the total amount of No Dollars (\$00.00), as listed in Schedule B on page 14 hereof and hereby made a part of this Settlement Agreement.

[fol. 414] (b) Any and all rights of the Contractor to reimbursement, if any, for the cost of maintaining, storing,

and preserving all books, records and other papers for that part of the period provided by Section 19 of the Act which is in excess of the period provided by Article VII-E of the Contract. This clause, however, shall not be deemed acknowledgement by the Government of a right in the Contractor to such reimbursement.

(3) Claims by the Contractor against the Government, which are based upon responsibility of the Contractor to third parties and which involve costs reimbursable under the Contract, but which are not now known to the Contractor.

(4) All rights and liabilities, if any, of the parties under the Renegotiation Act.

(5) All rights and liabilities of the parties, if any, arising under the Contract articles or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(6) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of October 31, 1942 (Public Law 768, 77th Congress, 35 U. S. C. 89-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the Contract.

(7) All rights and liabilities of the parties under the Contract articles, if any, applicable to options (except options to continue or increase the work under the Contract), covenants not to compete, covenants of indemnity, and agreements with respect to the future care and disposition by the Contractor of Government-owned facilities remaining in his custody.

(8) All rights and liabilities of the parties arising under the Contract articles, if any, or otherwise, concerning defects in, and guarantees or warranties relating to, any completed articles or component parts furnished to the Government by the Contractor pursuant to the Contract or this Settlement Agreement.

(9) All rights and liabilities, if any, of the parties under those clauses inserted in the Contract because of the re-

quirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit."

(10) All rights and liabilities of the parties under any agreement heretofore or hereafter made for the purpose of providing for the adjustment, as between the Government and the insurance carrier, of premiums, premium refunds, dividends, and all other refunds and moneys due or to become due under the War Department Insurance Rating Plan and/or the War Department Group Insurance Rating Plan as applied to the Contract.

[fol. 415] (11) All rights and liabilities, if any, of the parties under the Act relating to removal and storage of contract termination inventory.

(12) All rights of the Government to refunds, rebates, or other recoveries, if any, hereafter received by the Contractor on account of any item reimbursed under the Contract (including items reimbursed in this Settlement Agreement).

(13) All rights and liabilities of the parties arising under the Contract articles which relate to maintaining, storing, and preserving all books, records, and other papers.

Article 5. (a) (1) The parties to this Settlement Agreement recognize that from time to time subsequent to the date of this Settlement Agreement the Contractor will incur costs and expenses which are reimbursable to it by the Government. Therefore, in addition to payment of the sum provided for in paragraph (b) of Article 4 of this Settlement Agreement, the Government will currently reimburse the Contractor, upon certification and delivery to, and verification by, the Contracting Officer of documentary evidence satisfactory to him, for (i) all costs and expenses incurred by the Contractor, to the extent reimbursable under the Contract, in discharging claims described in subparagraphs (1) and (3) of paragraph (c) of Article 4 hereof and (ii) all costs and expenses incurred by the Contractor to the extent reimbursable under any provision of the contract, provided that the Contractor's rights under such provision have been excepted from the release in paragraph (c) of Article 4 hereof. The Contractor and the Contracting Officer may agree upon the whole or any part

of the amounts so to be paid to the Contractor. In the event of the failure of the Contractor and the Contracting Officer so to agree upon the whole or any part of the amounts to be paid to the Contractor, the Contracting Officer may determine the amount or amounts due to the Contractor and the provisions of Section 13 of the Act shall apply to such determination.

(2) It is estimated that the total amount of payments to be made to the Contractor under subparagraphs (1) and (3) of paragraph (c) of Article 4 and under Article 5 of this Settlement Agreement is Two Million Five Hundred Thousand Dollars (\$2,500,000.00). It is expressly understood and agreed that neither the Government nor the Contractor guarantees the correctness of this or other estimates contained herein. This estimate has been agreed to by both the Government and the Contractor, and copies are on file in the Office of the Chief of Ordnance.

(3) (i) At any time and from time to time after the execution of this Settlement Agreement, the Government at the request of the Contractor and subject to the approval of the Chief of Ordnance or his duly authorized representative, or the person to whom authority to make advance payments has been delegated, as to the present need therefor, shall advance to the Contractor, without payment of interest thereon by the Contractor, sums not to exceed fifty percent (50%) of the estimated cost of this Settlement Agreement as set forth in subparagraph (2) of paragraph (a) of this Article, as it may be amended from time to time. The percentage set forth herein may be changed from time to time by agreement.

[fol. 416] (ii) As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War, or the person to whom authority has been delegated to make advance payments, shall prescribe; Provided: That, if other security is not prescribed, the terms of this Settlement Agreement shall be considered adequate security for such advance payments; and provided further: That if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

(iii) Until all advance payments hereunder are liquidated, all funds received as advance payments under this Settlement Agreement, together with all funds received as reimbursements for costs under this Article, shall be deposited in a special bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684) as amended (12 U.S.C. 264) separate from the Contractor's general or other funds; Provided, That such bank or banks shall be approved in writing in advance by the Chief of Ordnance or his duly authorized representative. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balance in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this Settlement Agreement and any amendments thereto and not for other business of the Contractor. Any balances from time to time in such special account or accounts shall at all times secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances, which lien shall be superior to any lien of the bank or any other person upon such account or accounts by virtue of assignment to it of this Settlement Agreement or otherwise; Provided: That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks, properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the Chief of Ordnance, or his duly authorized representative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by, or by the direction of, the Chief of Ordnance or his duly authorized representative, shall, insofar as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the Chief of Ordnance or his duly authorized representative.

(iv) It is agreed that the aggregate of the advance payments outstanding under this Settlement Agreement together with funds received as reimbursement for costs under [fol. 417] this Article shall at no time exceed the total estimated costs set forth in subparagraph (2) of paragraph (a) of this Article, as revised from time to time, and any such excess shall immediately be repaid by the Contractor to the Government or if any reimbursement is due from the Government to the Contractor, shall be deducted therefrom; Provided, however, that if the total costs under this Article shall be in excess of the amount so paid to the Contractor, including said advance payments, the Government upon presentation of satisfactory evidence shall currently and promptly reimburse the Contractor, to the extent of such excess costs (subject to any delay in the availability of appropriated funds).

▲(v) If, ten (10) years from the date of this Settlement Agreement, the advance payments made to the Contractor in respect of the Contract have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor in respect of this Settlement Agreement; and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder in respect of this Settlement Agreement. Furthermore, if, in the opinion of the Chief of Ordnance or his duly authorized representative, the unobligated balance of the advance payments made by the Government under paragraph (i) hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the Chief of Ordnance or his duly authorized representative, the amount of such excess shall, upon demand by the Chief of Ordnance or his duly authorized representative, be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this paragraph is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) per annum from the date of the receipt of the demand until payment is made; Provided, however, that such

payment of interest is hereby waived as to any sum paid by the Contractor within fifteen (15) days after receipt of the demand hereunder. If and when the Contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder and the bank or banks concerned shall have authority to pay same to the Contractor and shall thereupon be relieved of any further obligation to the Government on account thereof.

(vi) The Contractor shall, at all times, afford to the Contracting Officer, or his duly authorized representative, proper facilities for the inspection and audit of the Contractor's accounts; and the Contractor hereby agrees that the Contracting Officer, or his duly authorized representative, shall have the right so far as the Contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank relating to the said special account or accounts.

[fol. 418] (vii) Any assignment of moneys due or to become due under this Settlement Agreement shall be subordinate to the rights or claims of the Government arising under this Settlement Agreement or any amendment thereto by virtue of any advance payments authorized herein or otherwise; Provided that, if at any time any claim arising under this Settlement Agreement is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the Chief of Ordnance or his duly authorized representative shall have the right to suspend further advance payments without notice.

(4) This paragraph may be amended hereafter by agreement between the parties hereto.

(b) Even though neither the existence nor the amount of any claim referred to in subparagraphs (1) and (3) of paragraph (c) of Article 4 may now be known to the Contractor, reimbursement for payments made by the Contractor in discharge of any such claim shall include, to the extent reimbursable under the Contract, wages and salaries otherwise reimbursable and all additional amounts determined (either by approval of the Contracting Officer or by litigation as hereinafter provided) to be due and payable for overtime or any other compensation and allowances under

local, state or Federal acts, laws, regulations or executive orders, relating to or affecting employment, hours or conditions of work and wages or compensation paid therefor. This paragraph (b) is not intended in any way to limit the generality of other paragraphs of this Article 5 and does not limit in any way such paragraph to reimbursement for wage and salary claims.

(c) The Contractor shall promptly notify the Contracting Officer of any claims of the type described in subparagraphs (1) and (3) of paragraph (c) of Article 4 which are asserted subsequent to the execution of this Settlement Agreement. In the event of the assertion of any such claim against the Contractor, it shall proceed in good faith promptly and diligently to assemble all data and information relative to such claim. All costs and expenses so incurred by the Contractor in the performance of this duty shall be reimbursed under the Contract.

(d) If the Contracting Officer has determined or shall determine that the best interest of the Government require that the Contractor initiate or defend litigation in connection with or settle claims of third parties arising under the Contract or by virtue of its termination, the Contractor will proceed with such litigation or settlement in good faith and the costs and expenses of such litigation, to the extent reimbursable under any provisions of the Contract, including without limitation judgments and court costs, allowances rendered or awarded in connection with suits for wages, overtime or salaries, and other items, and reasonable attorneys' fees for private counsel when the Government does not furnish Government counsel, shall be reimbursed under the Contract. The term "litigation" shall include suits at law or in equity and hearings or proceedings before any Governmental agency, including without limitation boards, commissions or other bodies.

[fol. 419] In Witness Whereof, the parties hereto have executed this Supplemental Contract in triplicate as of the day and year first above written.

The United States of America, by (S.) C. W. Mel-drum, Lt. Col., Ord. Dept., Executive Officer, Field Director Ammunition Plants (Contracting Officer appointed by the Chief of Ordnance), PMM, WDW, JCB, by (S.) O. P. Easterwood, Jr., Lt. Col., Corps

of Engineers (Contracting Officer appointed by the Chief of Engineers); Lone Star Defense Corporation (Contractor), by (S.) A. Kelly, Vice President, 500 S. Main Street, Akron, Ohio (Business Address).

Two witnesses as to execution by the Contractor: (S.) Jerome Taylor, 500 S. Main St., Akron, Ohio (Address); (S.) C. R. Couts, 500 S. Main St., Akron, Ohio (Address).

I, G. T. Kilmon, certify that I am the Assistant Secretary of the Corporation named as Contractor herein; that A. Kelly, who signed this Contract on behalf of the Contractor was then Vice President of said Corporation; that said Contract was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

(S.) G. T. Kilmon, Assistant Secretary (Corporate Seal).

[fol. 420]

Consent of Surety

To Supplemental Contract No. 21 dated June 1st, 1946, in connection with Contract No. W-ORD-516 DA-W-ORD-3 between the United States of America and the Lone Star Defense Corporation.

Consent of Surety is hereby given to the foregoing Supplemental Agreement, and the Surety agrees that its bond of bonds shall apply to and cover the due performance of the Contract as modified and extended thereby.

In Witness Whereof, the undersigned Surety has executed this instrument under its seal this 1st day of June 1946.

The B. F. Goodrich Company, Surety, by (S.) T. G. Graham, Vice President, 500 S. Main St., Akron, Ohio (Business Address). (Corporate Seal).

Attest: (S.) W. F. Avery, Secretary.

Certificate as to Corporate Surety

I, W. F. Avery, certify that I am the Secretary of the corporation named as Surety in the above Consent of Surety; that T. G. Graham, who signed the said Consent of Surety on behalf of the Surety, was then Vice President of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed,

sealed and attested for and in behalf of said corporation by authority of its governing body.

(S.) W. F. Avery, Secretary, (Corporate Seal).

[fol. 421].

Schedule A

Claims of third parties against the Contractor in connection with the performance and termination of the work at the Lone Star Ordnance Plant under Contract No. W-ORD-516 DA-W-ORD-3, which are excepted from Article 4 (c) of this Settlement Agreement by subparagraph (1) (a) thereof, are identified as follows:

(1) Claims of whatever kind or character involved in suits heretofore filed against the Contractor and identified as follows:

Title	Filed In	Court File No.	Estimated Amount
(a) Willie B. Combs vs. Lone Star Defense Corporation	Justice Court for Precinct No. 1 County of Bowie, Texarkana, Texas	1455	\$ 125.00
(b) B. F. Parker et ux. vs. Lone Star Defense Corporation	District Court Bowie County, Texas, Fifth Judicial District of Texas	05156	50,000.00
(c) Eura C. Davie vs. Lone Star Defense Corporation	District Court Bowie County, Texas, Fifth Judicial District of Texas	05421	600.00
(d) Vernice A. Meggs, et vir. vs. Texas Unemployment Compensation Commission, et al.	District Court, Cass County, Texas, Fifth Judicial District of Texas	13,847	300.00
(e) Bennie G. Clayton vs. American Mutual Liability Insurance Company, et al.	District Court Bowie County, Texas, Fifth Judicial District of Texas		60,750.00

(2) Claims by the State of Texas for taxes on motor fuel or other petroleum products, or upon the purchase, storage, use or consumption thereof, heretofore acquired or used in the performance of the work under the Contract. The estimated amount of payments to be made hereunder is One Hundred Twenty-Five Thousand Dollars (\$125,000.00).

(3) Claims by subcontractors and suppliers for payments due to subcontractors and suppliers arising under purchase orders or subcontracts heretofore transferred and assigned to the Government pursuant to Article VI-A of Title VI of the Contract, as amended, for settlement and payment regardless of the amount thereof.

(4) Claim of U. S. Steel Products Company arising out of termination of purchase order for steel drums—\$60,000.00.

[fol. 422]

Schedule B

I. Expenditures by the Contractor which are the subject of outstanding (unrecouped) General Accounting Office exceptions and in connection with which deductions are being made in this Settlement Agreement:

None.

II. Expenditures similar in nature to those in connection with which General Accounting Office exceptions have been taken and in connection with which deductions are being made in this Settlement Agreement:

None.

III. Expenditures which are the subject of General Accounting Office exceptions in connection with which deductions have been made by the Finance Officer:

None.

[fol. 423] The undersigned, K. M. Prichard, Assistant Secretary of Lone Star Defense Corporation, an Ohio corporation, hereby certifies that the foregoing Contract No. W-ORD-516 DA-W-ORD-3, by and between the United States Government and Lone Star Defense Corporation, dated the 23rd day of July, 1941, together with Notice of Termination, Supplements Nos. 1, 8, 11, 16, 18, 19, 20, and 21, and Change Orders Nos. 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, and 17 thereto, is a true and correct copy of said Contract as changed and amended, all as appears by the records of said corporation now in his official custody as such Assistant Secretary of said corporation.

In witness whereof, the undersigned has set his hand as Assistant Secretary of Lone Star Defense Corporation, and affixed the seal of said corporation this the 11th day of December, 1946.

K. M. Prichard, Assistant Secretary, Lone Star Defense Corporation. (Seal.)